



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRM-M-59505-2024 (O&M)
Date of decision: 02.05.2025

Harke Budha

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ajay Pal Singh Saini, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 483 of the BNSS, 2023, is for grant of regular bail to the petitioner in FIR No.139 dated 28.09.2023 registered under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Lalru, District S.A.S. Nagar (Mohali).

2. As per the prosecution case, on 28.09.2023, SI Rajinder Singh alongwith other police party were patrolling in the area of Police Station in connection with bad elements and were going on Lalru Mandi slip road towards ITI side, Ambala to Chandigarh side. At the gate of Police Station, Mam Chand joined the police party. At about 7.30 P.M. when they reached near Senior Secondary School, Lalru Bus Stop, two gorkha persons were seen holding the string of a sky blue colour bag in their hands. On asking, they disclosed their names as Dipender Yari and another person disclosed his name as Harke Budha. On search of their



bag, recovery of 04 kgs of Opium has been recovered. They did not produce any license or permit for the same. Thereafter, the impugned FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and has no prior criminal record. It is argued that the alleged recovery of 04 Kgs of Opium has been shown from a bag carried jointly by the petitioner and one Dipender Yari, however, there is no independent witness to the alleged recovery, and the entire case relies solely on the statements of police officials. He further contends that no specific role has been attributed to the petitioner other than his presence at the spot, and there is nothing on record to establish the conscious possession of the petitioner over the alleged contraband.

4. Learned counsel for the petitioner further submits that there are total 12 prosecution witnesses cited in the list of witnesses, out of which, 02 PWs have been examined till date and the trial is likely to take long time in conclusion.

5. *Per contra*, learned State counsel has filed custody certificate today in the Court which is taken on record and he opposes the prayer made by learned counsel for the petitioner on the ground that huge quantity of contraband was recovered from the conscious possession of the petitioner, which falls within the ambit of commercial quantity and as such, the petitioner is not entitled to any relief, however,



he could not controvert the fact that the petitioner is a first offender and is not involved in any other case.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars from the last 01 year and 07 months. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 12 prosecution witnesses, 02 PWs have been examined so far.

7. A two Judge bench of the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023*** released the accused on bail after completion of 18 months of custody on account of protracted trial in NDPS case involving commercial quantity of contraband. Reliance in this regard can also be placed upon the judgments rendered by the Hon'ble Supreme Court passed in ***Md. Aliul Islam @ Aliul Islam @ Alius Vs. The State of West Bengal SLP (Crl.) No. 000736/2024***, ***Debrata Mondal Vs. State of West Bengal SLP(Crl.) No. 14970-2023***, ***Santarul Islam @ Santa Vs. The State of West Bengal SLP(Crl.) No. 13169/2023***, ***Indrajit Mondal @ Piglu Vs. The State of West Bengal SLP(Crl.) No. 8512/2023***, ***Narjul Islam @ Najbul Hoque Vs. The State of West Bengal SLP(Crl.) No. 14172/2023***, ***Subhashri Das @ Rana @ Subhoshree Vs. The State of West Bengal SLP(Crl.) No.15284/2023***, ***Mithun Sk. & Anr. Vs. The State of West Bengal SLP***



(Crl.) No.016598/2023, SK. Nasiruddin @ Nasirddin SK. Vs. State of West Bengal SLP (Crl.) No.003402/2024, Indadul Shah Vs. The State of West Bengal SLP(Crl.) No. 12670/2023, Hanef Kharsani @ Hanef Sheikh Vs. Union of India, Ripon Seikh & Ors. Vs. State of West Bengal SLP(Crl.) No. 16663/2023, Moidul Sarkar Vs. The State of West Bengal SLP(Crl.) No. 15668/ 2023, Saniya Bibi @ Soniya Bibi Vs. The State of West Bengal SLP(Crl.) No. 2354/2024, Saddam Hossain Vs. State of West Bengal SLP(Crl.) No. 15496/2023, Bijon SK @ Golam Murselim Vs. The State of West Bengal SLP (Crl.) No. 6046/2024 and Subhas Vs. The State of West Bengal SLP(Crl.) No. 8823/2019.

8. Further, the culpability, if any, would be determined at the time of trial and as such, no useful purpose will be served by further detention of the petitioner-accused. Keeping the petitioners in further detention without the prospect of the trial being concluded in the near future, would be violative of their rights under Article 21 of the Constitution of India. A two Judge bench of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 AIR SC 1648*, has held that the concept of fairness enshrined under Article 21 of the Constitution of India would trump the bar on granting bail in cases involving commercial quantity of contraband, as stipulated by Section 37 of the NDPS Act. Speaking through Justice S. Ravindra Bhat, has opined as follows:

“20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner,



and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only *prima facie*, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*). **Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*).** Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

21. **Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.** Jails are overcrowded and their living conditions, more often than not, appalling.” (emphasis added)

9. A two Judge Bench of Hon'ble Supreme Court in ***“Satender Kumar Antil vs. CBI”, (2022) 10 SCC 51***, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and



thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

10. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Harke Budha is ordered to be released on regular bail during pendency of the trial, on furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.

11. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

02.05.2025
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No