

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59523-2024
Reserved on: 09.01.2025
Pronounced on: 30.01. 2025

Anil Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Argued by: Mr. Kartar Singh, Advocate
for the petitioner.

Mr. Akshay Kumar, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
113	14.06.2023	Lehra, Distrcit Sangrur	22/29/61/85 of the NDPS Act

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 439 Cr.P.C, seeking regular bail.

2. Par paragraph 12 of the bail application and reply dated 08.01.2025, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Dated	Sections	Police Station
1.	69	25.09.2023	22 (C), 29 of the NDPS Act	Sadar Rampura, District Bathinda
2.	21	13.04.2023	22, 29 of the NDPS Act	Khanauri

3. The facts and allegations are taken from the reply filed by the State. On June 14, 2023, based on secret information, the Police seized 38 bottles of cough syrup (100 ml each) and 250 tablets from the joint possession of Birbal Singh and Shavinderpal Singh. The Investigator claims to have complied with all the statutory requirements of the NDPS Act, 1985, and CrPC, 1973. During the custodial interrogation of the accused disclosed the petitioner as the supplier of the drugs; based on the disclosure statement, the police arraigned the petitioner as an accused by incorporating S. 29 of the NDPS Act.

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.

5. The State's counsel opposes bail and refers to the reply.

6. As per the prosecution, the quantity allegedly involved in this case is commercial. Given this, the rigors of S. 37 of the NDPS Act apply in the present case. The petitioner must satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. In *Abida v. State of Haryana*, 2022:PHHC:058722, [Para 10], CRM-M-5077-2022, decided on 13-05-2022, this court observed as follows:

[10]. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such offence, and is not likely to commit any offence while on bail. If either of these two conditions is not met, the ban on granting bail operates. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offence, the Court still cannot give a finding on assurance that the accused is not likely to commit any such crime again. Thus, the grant of bail or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts.

[31]. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more subsist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC.

8. It would be appropriate to refer to the evidence collected against the petition, which is taken from the reply, which reads as follows:

"6. That during interrogation, both the accused Birbal Singh @ Bittu and Shavinderpal disclosed that they used to bring intoxicant vials and intoxicant tablets from Anil Kumar s/o Balwan Singh @ Balwinder Singh r/o house no. 579, street no. 3, Bahadurgarh (Haryana). The intoxicant tablets and vials, which were recovered from their possession that were supplied to them by Anil Kumar. On the basis of said disclosure, above said Anil Kumar son of Balwan Singh @ Balwinder Singh was nominated as an accused in this case on 15.06.2023 and offence u/s 29 NDPS Act was added."

THE ROLE OF THE PETITIONER.

The present FIR was registered against accused namely Birbal Singh @ Bittu and Shavinderpal on the basis of secret information received by ASI Satpal Singh Police Post, Chotian. During investigation both the accused were apprehended by S.1. Harminder Singh and 38 intoxicant vials marka ONREX 100/100 ML and 25 strips each containing 10/10 tablets total 250 intoxicant tablets marka Carisoprodol tablets IP Carisoma Tablets were recovered from their conscious possession in the presence of Sh. Pushpinder Singh PPS, DSP, Lehra. During interrogation both the above said accused disclosed that they used to bring intoxicant vials and intoxicant tablets from **Anil Kumar s/o Balwan Singh@** Balwinder Singh r/o house no. 579, street no. 3, Bahadurgarh (Haryana). On the basis of their disclosure, Anil Kumar (present petitioner) was nominated as an accused in this case on 15.06.2023 and offence u/s 29 NDPS Act was added. Accused/petitioner Anil Kumar was arrested on 19.10.2023. During interrogation he admitted this very fact that, he used to supply the intoxicant tablets and intoxicant vials to Birbal Singh @Bittu and Shainverpal. The intoxicant vials and tablets, which were recovered from the possession of Birbal Singh @ Bittu and Shavinderpal, that were supplied to them by him. So, a specific role is attributed to the petitioner in the commission of present offence.

B. THE EVIDENCE AGAINST THE PETITIONER.

That the present FIR was registered against Birbal Singh @ Bittu and his co-accused Shavinderpal. Both the accused were apprehended on 14.06.2023 at the spot and from their possession 38 intoxicant vials marka ONREX 100/100 ML. and 25 strips each containing 10/10 tablets total 250 intoxicant tablets marka Carisoprodol tablets IP Carisoma Tablets were recovered. Accused Shavinderpal has mobile phone no. 98764-XXXXX and petitioner/accused Anil Kumar son of Balwan Singh@ Balwinder Singh has mobile phone no. is 93501-XXXXX. According to the disclosure made by accused Shavinderpal, he used to bring drugs from the Anil Kumar. The call detail records of both the mobile phones of accused Shavinderpal and Anil Kumar (present petitioner) was obtained, which on examination revealed that there were conversations between the two on 03.06.2023, 07.06.2023 and 14.06.2023. So, the complicity of petitioner in the commission of present offence has been proved.”

9. Thus, the evidence collected so far consists of disclosure statements without any discovery of fact. However, the calls between the petitioner and the co-accused have not been explained by the petitioner.

10. In Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the majority view of a

three-member bench holds as follows:

We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

11. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused only on the disclosure statement of the main accused, from whose possession the investigator had recovered the contraband

12. Further, the petitioner has criminal antecedents, as mentioned above.

13. As per paragraph 11 (D) of the reply filed to the bail petition, the petitioner has been in custody for 1 year 2 months and 17 days.

14. The cumulative effect of the nature of evidence, pre-trial custody, and the criminal history is that given the nature of medicinal drugs, which contain majority of alcohol and sugar syrup, this Court ignores the criminal history for the purpose of bail and the pre-trial custody of around one year and three months seems justifiable in the given circumstances.

15. The petitioner is entitled to bail because Hon’ble Supreme Court had granted bail on prolonged custody in the following judicial precedents:

1) In Chitta Biswas v. The State of West Bengal, CrA 245-2020, decided on February 7, 2020, Hon’ble Supreme Court holds,

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out.

2) In Rajib Dey v. The State of West Bengal, decided on 20 Jan 2023, SLP (Crl) 8895-2022, Hon’ble Supreme Court holds,

[2]. The petitioner seeks his enlargement on regular bail in a Case arising out of FIR No.341/2021, dated 06.12.2021, registered at Tahirpur Police Station, District Nadia, West Bengal, under Section 21(c) of the NDPS Act and Section 25/27 of the Arms Act. As per the allegation, 30 bottles of phensedyl syrup containing codeine phosphate were recovered from the petitioner. There are no criminal antecedents of the petitioner. The petitioner is in custody since 18.02.2022. The charges have already been framed and the trial has commenced but conclusion thereof will take some time.

[3]. Keeping in view all the attending circumstances but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

- 3) In Ismaul Sk v. State of West Bengal, decided on 02 Jan 2024, MANU/SCOR/00506/2024, Hon'ble Supreme Court holds,

The appellant has undergone incarceration for a period of 1 year and 10 months. The allegation is that 50 bottles containing Phensedyl cough syrup were recovered from the appellant. Another issue is of violation of Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Considering the facts of the case and particularly in view of the fact that the trial has hardly made any progress in the sense that only one prosecution witness has been partly examined, the appellant deserves to be enlarged on bail.

Criminal Appeal @ SLP(Criminal)No.14827/2023 Page 1 of 4 For that purpose, the appellant shall be produced before the Trial Court within a period of one week from today. The Trial Court shall enlarge the appellant on bail on appropriate terms and conditions, including the condition of regularly attending the Trial Court and cooperating with the Trial Court for early disposal of the case. The appeal is accordingly

allowed.

- 4) In Najrul Islam @ Najbul Hoque vs The State of West Bengal, decided on 03 Jan 2024, MANU/SCOR/00264/2024, Hon'ble Supreme Court holds,

The counsel for the petitioner would submit that the petitioner was arrested on 19.11.2022 in connection with the case arising out of FIR No.477/2022 and the High Court rejected bail for the petitioner under the impugned order on 06.07.2023. It is also pointed out that the 100 bottles of Phensedyt Syrup containing codiene phosphate were seized in the case. Mr. Gupta would then advert to various bail orders passed by this Court in cases with similar kind of contraband.

Admittedly, charges are yet to be framed and the trial is unlikely to conclude in near future. The State counsel by way of explanation submits that charges in this case could not be framed as one of the accused is absconding.

Having regard to the circumstances here and the remote possibility of the trial to conclude in near future and the incarceration of the

petitioner for over a year in connection with the contraband in question, we deem it appropriate to grant bail to the petitioner.

Accordingly, the petitioner (Najrul Islam Najbul Hoque) be released on bail. Appropriate terms and conditions for bail is to be imposed by the learned Trial Court

5) In Nandalal Mondal @ Abhay Mondal vs The State of West Bengal, decided on 03 Jan 2024, MANU/SCOR/00327/2024, Hon'ble Supreme Court holds,

[2]. The allegations are that the petitioner along with other accused persons were found in possession of two plastic bags a cough containing a total of 10,000 ml. of codeine phosphate narcotic substance. It further syrup, which is notified as a narcotic substance. It further appears from the contents of the FIR that the petitioner, who was found in conscious possession of two white plastic containers both of which contained 5,000 ml. each of the said liquid. He was apprehended at the spot and is in custody since then.

[3]. The respondent State of West Bengal has filed its counter affidavit, in which it is candidly acknowledged that though the investigation is complete and the chargesheet has been filed, however, the charges are yet to be framed. The prosecution proposes to examine 10 witnesses. The conclusion of trial will, thus, take considerable time. The petitioner is in custody for the last more than one and a half years.. He does not have any criminal antecedents.

[4]. According to learned counsel appearing on behalf of respondent State, the narcotic substance allegedly recovered from the petitioner's possession is of commercial quantity' and, as such, the rigors of Section 37 of the NDPS Act are attracted. We have considered the submission.

[5]. Taking into consideration the period already undergone by the petitioner in custody; the fact that he does not have any criminal antecedents and also keeping in view that the prolonged incarceration will not serve the cause of substantial justice, however, without expressing any views on the merits of the case, we are inclined to release the petitioner on bail at this state. The petitioner is, accordingly, directed to be released on bail subject to the following directions: ...

6) In Subhashri Das @Rana @ Subhoshree v. The State of West Bengal, decided on 05 Jan 2024, MANU/SCOR/02185/2024, Hon'ble Supreme Court held as under:-

The accusation is that the petitioner was found in possession of 60 bottles of Phensedyl Syrup (100 ml in each bottle). The charge sheet was filed on 31.8.2022. The petitioner has been in custody since 12.3.2022. The application for bail filed by the petitioner was rejected by the High Court and hence this special leave petition.

Heard learned counsel for the petitioner and also counsel for the Respondent-State. Taking note of the nature of the accusation and the fact that the petitioner is in custody since 12.3.2022, we are of the considered view that the petitioner can be ordered to released on bail subject to the terms and conditions to be imposed by the

Trial Court. Ordered accordingly. The petitioner shall be produced before the Trial Court forthwith for compliance with the order.”

- 7) In *Indrajit Mondal @ Piglu v. The State of West Bengal*, SLP (Crl.) No(s). 8512-2023, decided on 25 Jan 2024, Hon’ble Supreme Court holds,

[1]. The petitioner is in custody since 17 August 2021.

[2]. FIR No 355 of 2021 was registered at PS Murshidabad for offences punishable under Sections 21(c) and 29 of the Narcotic Durgs and Psychotropic Substances Act 1985. The allegation is that the petitioner was found to be in possession of ten litres of codeine phosphate.

[3]. We have heard Mr Praveen Swarup, counsel appearing on behalf of the petitioner, and Mr Shreyas Awasthi, counsel appearing on behalf of the State of West Bengal.

[4]. Counsel appearing on behalf of the State of West Bengal states that the charges have been framed on 4 January 2024 and the prosecution proposes to examine seventeen witnesses.

[5]. The petitioner is in custody for over two years and five months. There is no prospect of the trial concluding on an early date. Hence, we are of the view that it would be appropriate and proper to release the petitioner on bail subject to such terms and conditions as may be imposed by the Special Court under NDPS Act-cum-ADJ, Second Court Berhampore, Murshidabad in connection with NDPS Case No 166 of 2021. Ordered accordingly.

- 8) In *Saiful Islam v. The State of West Bengal*, decided on 14 Feb 2024, MANU/SCOR/60244/2024, Hon’ble Supreme Court holds,

[3]. The counsel would point out that the petitioner is in custody for over two years since he was arrested on 08.01.2022. It is then submitted SLP (CRIMINAL) Diary No(s).39202/2023 that the contraband in question is 112 bottles of Phensedyl Syrup containing codeine phosphate.

[4]. Since bail in similar circumstances was allowed by this Court, following the orders enclosed to the petitioner, we deem it appropriate to grant bail to the petitioner. Accordingly the petitioner (Saiful Islam) be released on bail in connection with the case arising out of FIR No.16/2022. Appropriate bail condition be imposed by the learned Trial Court.

- 9) In *Debrata Mondal vs State of West Bengal*, Decided on 15 Feb 2024, MANU/SCOR/23288/2024, Hon’ble Supreme Court held as under:-

[3]. Going by the allegations, 290 bottles of phensedyl syrup was recovered from the possession of the petitioner and the co-accused. The fact is that the co-accused was enlarged on bail by the High Court. The petitioner is in custody since 10.01.2022. Taking into account the aforesaid aspects, we are of the considered view that the petitioner can be enlarged on bail, subject to the terms and conditions to be imposed by the Trial Court. Ordered accordingly. In that

regard, the petitioner shall be produced before the Trial Court, forthwith.”

- 10)** In Md. Aliul Islam @ Aliul Islam @ Aliul vs The State of West Bengal, MANU/SCOR/29168/2024, Decided on 26 Feb 2024, the Hon’ble Supreme Court holds,

Heard learned counsel for the appellant in support of the petition and learned counsel for the State and perused the material on record. The appellant is in custody for approximately 1 year 4 months.

During the course of submission it was pointed out by the learned counsel for the appellant that in another case the appellant has been granted bail and therefore, similar relief may be granted by this Court in this case.

The said submission is in response to the submission made by the learned counsel for the respondent-State that this is not the only case in which the appellant has been apprehended. She further submitted that a huge quantity of codeine cough syrup was recovered from the premises (Godown) which has been tenanted by the appellant herein. Considering the facts on record, in our view, the case for bail is made out.

- 11)** In SK. Nasiruddin @ Nasirddin SK. Vs State of West Bengal, decided on 06 Mar 2024, MANU/SCOR/34261/2024, the Hon’ble Supreme Court holds,

[4]. The appellant is charged for the offence(s) punishable under Section 21(C)/29 of the NDPS Act, 1985 and seeks his enlargement on regular bail in a Case arising out of FIR No. 219 of 2022 dated 12.04.2022, registered at P.S. Raghunathganj, Jangipur Police District, Murshidabad, West Bengal.

[5]. We note the submission of the learned counsel for the appellant that the appellant was arrested on 12.04.2022 and since then he has been in custody as an under trial prisoner. Even though charges have been framed, trial is yet to begin but there is no likelihood of the trial being taken up and completed within a short period of time. It is also submitted that the appellant does not have any criminal antecedents. It is also brought to our notice that the High Court while rejecting the regular bail application had erroneously recorded that 50 ltrs. of codeine phosphate was recovered from the appellant. This is perhaps a mistake as recovery of only 5 ltrs of codeine phosphate which was mentioned in the FIR.

[6]. Keeping in view all the attending circumstances but without expressing any views on the merits of the case, we are inclined to grant bail.

- 12)** In Indadul Shah vs The State of West Bengal, decided on 20 Mar 2024, MANU/SCOR/42687/2024, Hon’ble Supreme Court holds,

The petitioner was arrested on 27.10.2022 in furtherance of an FIR dated 27.10.2022 for offences punishable under Section 21(c)/29

of the Narcotic Drugs and Psychotropic Substances Act, 1985. He was found in possession of 70 bottles of 100 ml. Phensedyl.

We notice from the record that charge-sheet has already been filed on 20.04.2023. There is no likelihood of the trial being taken up and completed within a short period of time. There are no criminal antecedents involving the petitioner herein.

Considering the facts and circumstances, we are inclined to grant bail. The petitioner is directed to be released on bail in connection with FIR No. 334 of 2022 registered at Police Station Jalangi District Murshidabad subject to such terms and conditions as may be imposed by the Trial Court.

13) In Hanef Kharsani @ Hanef Sheikh vs Union of India, decided on 08 Apr 2024, MANU/SCOR/49775/2024 the Hon'ble Supreme Court holds,

The appellant Hanef Kharsani @ Hanef Sheikh has been booked for the crime registered pursuant to NCB Crime No. 07/NCB/KOL/2023 dated 09.02.2023 in respect of offence punishable under Sections 8 (c) and 21 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act'). The appellant preferred an application under Section 439 of the Code of Criminal Procedure, 1973 before the High Court seeking bail in the instant crime. The High Court noted that the narcotic substance i.e. 415 bottles of Phensedyl Syrup containing codeine phosphate which is above commercial quantity was recovered from the appellant and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

It is submitted by the learned counsel for the appellant that the appellant was not in conscious possession of the offending material and that the prosecution has not complied with the requirements of the NDPS Act. Further, the appellant is in jail for approximately one year and two months and the trial is not likely to be completed in the near future. Moreover, in certain identical cases, the accused have been granted relief of bail by this Court. Therefore, the appellant may also be granted bail during the pendency of the trial.

Learned counsel for the appellant also brought to our notice the fact that on completion of the investigation, the charge sheet has been filed and there are seven witnesses but the trial has not yet commenced.

However, learned ASG appearing for the respondent submitted that this is not a fit case for grant of bail inasmuch as the quantity which has been recovered is over and above the commercial quantity and it has become a regular feature in that part of the country where enormous amounts of Phensedyl Syrup containing codeine phosphate is being recovered and, therefore, the application seeking bail may be dismissed.

Considering the facts on record, in our view, the case for bail is made out."

14) In Nijam Sheikh @ Md. Nijam SK @ MD Nizam SK v. The State of West Bengal, decided on 15.04.2024, MANU/SCOR/52031/2024, the Hon'ble Supreme Court holds,

The appellant Nizam Sheikh Md. Nizam Sk Md. Nizam Sk has been booked for the crime registered pursuant to FIR No.90/22 dated 19.03.2022 lodged with Police Station Lalgola, District Murshidabad, under Section 21(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act' for short). The High Court noted that the narcotic substance i.e. 55 bottles of phensedyl syrup containing codeine phosphate which is above commercial quantity was recovered from the appellant and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

Heard learned counsel for the appellant and counsel for the respondent-State.

It is submitted by the learned counsel for the appellant that the appellant was not in conscious possession of the offending material and that the prosecution has not complied with the requirements of Section 52-A of the NDPS Act. Further, the appellant is in jail since 28.03.2022 and the trial is not likely to be completed in the near future. Therefore, the appellant may be granted bail during the pendency of the trial.

Learned counsel for the Respondent-State submitted that recording of evidence is to be commenced from tomorrow (i.e. 16.04.2024) and there are only eight (08) witnesses as per the charge sheet and the trial would be completed expeditiously. Therefore, at this stage, the appellant need not be released on bail.

It was further submitted that the other seven (07) co-accused who were granted bail, are not cooperating with the trial of the case and therefore, this is not a fit case where bail may be granted to the appellant herein.

Considering the facts on record, in our view, the case for bail is made out.”

15) In Mohidul Sarkar v. The State of West Bengal, decided on 19 Apr 2024, SLP (Crl) 15668- 2023, Hon’ble Supreme Court holds,

[2]. Notice in this case was issued on 29.11.2023 with the following order:

“xx xx xx The counsel submits that the petitioner is in custody since 14.09.2022 for about 14 months. He then points out that the contraband in question is Phensedyl Syrup containing codeine phosphate and around 320 bottles of the syrup was recovered. The petitioner’s counsel submits that notice in similar matter was issued on 13.10.2023 in the SLP (Crl.) Diary No.39063/2023. Issue notice, returnable in three weeks. Dasti notice on the Standing Counsel for the State, in addition.”

[3]. Having considered the duration of custody and the nature of Contraband i.e., 320 bottles of Phensedyl Syrup seized from the petitioner, we deem it appropriate to grant bail to the petitioner – Mohidul Sarkar in connection with FIR No. 224 of 2022 registered at P.S. Sagarpara. The similar orders passed by this Court in SLP (Criminal) No. 12911 of 2023 on 22.01.2024 and Criminal Appeal No. 409 of 2024 on 25.01.2024 are also noted. Appropriate bail conditions be imposed by the learned Special Court, Murshidabad. It is ordered accordingly.

16) In Ripon Seikh v. State of West Bengal, decided on 19 Apr 2024,

MANU/SCOR/56447/2024, Hon'ble Supreme Court holds,

[4]. On the other hand, having regard to the duration of custody since the petitioners were arrested on 23.11.2022 and the nature of Contraband i.e., 73 bottles of Phensedyl Syrup containing Codeine Phosphate recovered from the joint possession of the four accused, we deem it appropriate to grant bail to the petitioners Ripon Seikh, Sahin Seikh and Babu Sk, in connection with FIR No. 310 of 2022 registered at P.S. Sagarparara, District Murshidabad. Appropriate bail conditions be imposed by the learned Special Court, Murshidabad. It is ordered accordingly.

17) In Saniya Bibi @ Soniya Bibi vs The State of West Bengal, decided on 26 Apr 2024, MANU/SCOR/56979/2024, Hon'ble Supreme Court holds,

[3]. Mr. Dibyadyuti Banerjee for the petitioner points out that the Contraband in question is 105 bottles of Phensedyl Syrup and the petitioner, who is a lady, is in custody for about 2 years 3 months since he was arrested on 24.01.2022. That apart, the next date of trial is fixed on 23.07.2024 and although 16 witnesses are cited, not a single witness is examined so far.

[4]. Notice in this case was issued on 04.03.2024 and today the State counsel prays for time to file counter affidavit.

[5]. Having considered the circumstances and more particularly the duration of custody, the nature of the Contraband and the unlikely possibility of the trial getting concluded on an early date, we deem it appropriate to grant bail to the petitioner Saniya Bibi@ Soniya Bibi in connection with the FIR No. 30 of 2022 dated 24.01.2022 registered with P.S. Jalangi, District Murshidabad. It is ordered accordingly. Appropriate bail conditions be imposed by the learned trial court.

18) In Saddam Hossain vs State of West Bengal, decided on 03 May 2024, MANU/SCOR/62782/2024, Hon'ble Supreme Court holds,

[2]. Notice in this case was issued on 08.12.2023, with the towing order:-

"...The counsel refers to the FIR 37/2023 to point out that 72 bottles of 100 ml Phensedyl Syrup were seized and since each 5 ml contains 10 mg of codeine phosphate, the total quantity of codeine phosphate in the 72 bottles would be around 14.4 grams. Such quantity is below the stipulated commercial quantity in the Schedule to the NDPS Act.

It is further pointed out that the petitioner has been in custody for 10 months and charges are yet to be framed in the matter.

Issue notice on the plea for bail, returnable in four weeks.

Dasti notice on the standing Counsel for the State, in addition."

[3]. Learned counsel for the state in his turn submits that evidence of witnesses is scheduled to commence in July 2024.

[5]. Looking at the above facts and more particularly the nature of the contraband and the long custody of the petitioner since

23.01.2023, we deem it appropriate to grant bail to the petitioner. Accordingly the petitioner (Saddam Hossain) be released on bail in connection with the case arising out of FIR No.37/2023 registered at P.S. Raninagar, District Murshidabad. Appropriate bail condition be imposed by the learned Trial Court.”

19) Mithun SK v The State of West Bengal, decided on 17 May 2024, MANU/SCOR/71191/2024, the Hon’ble Supreme Court held as under:-

The appellants have been booked for the crime registered pursuant to FIR No.158 of 2022 dated 26.07.2022 lodged with Police Station Sagarpara, District Murshidabad, under Section 21(C)/29 of the NDPS Act, 1985. The High Court noted that the narcotic substance i.e. 388 bottles of phensedyl syrup containing codeine phosphate which is above commercial quantity was recovered from the appellants and in view of the statutory restrictions under Section 37 of the NDPS Act, the application seeking bail was rejected.

Heard learned counsel for the parties.

We have perused the counter affidavit filed by the respondent-State.

It is submitted by the learned counsel for the appellant(s) that the appellants were not in conscious possession of the offending material and that the prosecution has not complied with the requirements of Section 52-A of the Act, 1985. Further, the appellants are in jail since 26 July 2022. Therefore, the appellants may be granted bail during the pendency of the trial. However, learned counsel for the respondent submitted that the recovery has been made from the appellants herein.

Considering the above facts on record, in our view, the case for bail is made out.”

20) In Bijon SK @ Golam Murselim v. The State of West Bengal, decided on 08 Jul 2024, SLP (CrI) 6046-2024, a three Bench of Supreme Court holds,

[1]. The petitioner has been denied bail in connection with FIR No 252 of 2022 dated 16 November 2022 lodged at PS Doulatabad, District Murshidabad under Sections 21(c), 22 (c) and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985. The allegation is that the petitioner was the owner of a truck which was alleged to be used for the transport of 9075 bottles of Phensedyl.

[2]. The petitioner is in custody since 5 August 2023. Charges have been framed. The prosecution proposes to examine 23 witnesses.

[3]. Considering the above facts and circumstances, an early conclusion of the trial does not seem possible. Conscious as the Court is of the provisions of Section 37 of the NDPS Act, we are of the view that the petitioner should be released on bail, subject to such terms and conditions as may be imposed by the Special Court under NDPS Act, Berhampore, Murshidabad. Accordingly, the petitioner is directed to be released on bail, subject to such terms and conditions as may be imposed by the Special Court under

NDPS Act, Berhampore, Murshidabad in NDPS Case No 226 of 2022.”

21) In Alamgir Sk. @ Alam Sk. @ Alomgir Sk. v. State of West Bengal, decided on 12 Aug 2024, SLP (Crl.) 15176-2023, Hon’ble Supreme Court holds,

The petitioner is an accused for the offences punishable under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act. It is alleged that 99 bottles of phensedyl syrup were recovered from him. His bail application was dismissed by the High Court. He has already undergone about 1 year and 10 months in jail.

Heard learned counsel for the petitioner and the State.

Under these circumstances of this case, we are of the opinion that a case of bail is made out for the petitioner.

22) In Dhananjoy Mondal v. The State of West Bengal, decided on 03 Sep 2024, SLP (Crl.) 6526-2024,

[2]. The petitioner was arrested on 15.12.2022 and by now, he has been in custody for 1 year 9 months. The Contraband in question is 100 bottles of Phensedyl Syrup.

[4]. Having considered the above and the fact that the petitioner was granted bail in all the three cases mentioned in paragraph 7 of the State’s counter affidavit and looking at the nature of the Contraband in the present case, we deem it appropriate to grant bail to the petitioner – Dhananjoy Mondal. It is ordered accordingly. Appropriate bail conditions be imposed by the learned trial court. The petitioner is entitled to bail on prolonged custody because the Hon’ble Supreme Court has granted bail on prolonged custody in the following cases:

23) In Yusuf SK v. The State of West Bengal, decided on 12-Nov-2024, SLP (Crl) 5924-2024, Hon’ble Supreme Court holds,

[1]. Against rejection of regular bail by the High Court and to seek bail, the present Special Leave Petition has been filed. The petitioner is in custody w.e.f. 18.12.2022 in connection with FIR No. 462/2022 under Sections 21(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 27(a) of the Drugs and Cosmetics Act, 1940 registered with Police Station Baishnabnagar, District Malda, West Bengal.

[2]. Having considered the submissions made by learned counsel for the parties, looking to the period of incarceration suffered by the petitioner in a case of recovery of 295 bottles of phensedyl syrup, we deem it appropriate to release the petitioner on regular bail. Accordingly, the petitioner is directed to be released on bail on furnishing the suitable bail bonds and sureties and on such other terms and conditions as may be deemed fit by the trial court.

16. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)

(b)(ii) of the NDPS Actⁱ.

17. In *Tajmul SK v. The State of West Bengal*, decided on 23 Jul 2024, CrA 3047-2024, Hon’ble Supreme Court holds,

[5]. We are inclined to set aside the impugned order only on the premise that right to speedy trial is a fundamental right. Despite the fact that the appellant has been under incarceration for more than one and a half years, the trial is yet to start, though, it is submitted by learned counsel appearing for the State that charges have been framed. Suffice it is to state that trial would take considerable length of time. There is no antecedent involving the appellant.

[6]. Accordingly, the impugned order is set aside and the appellant is granted bail, subject to the conditions that may be imposed by the Trial Court.

18. Given the above, the petitioner’s pretrial custody is more than some of the judicial precedents mentioned above; the petitioner is entitled to bail under Article 14 of the Constitution of India.

19. Given the drugs were medicines that attracted violation of S. 22 of NDPS Act, viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

20. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

21. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

22. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

23. This order is subject to the petitioner’s complying with the following terms.

24. The petitioner shall abide by all statutory bond conditions and appear before the

concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

25. Given the background of allegations against the petitioner, it becomes paramount to protect the drug detection squad, their family members, as well as the members of society, and incapacitating the accused would be one of the primary options until the filing of the closure report or discharge, or acquittal. Consequently, it would be appropriate to restrict the possession of firearm(s). [This restriction is being imposed based on the preponderance of evidence of probability and not of evidence of certainty, i.e., beyond reasonable doubt; and as such, it is not to be construed as an intermediate sanction]. Given the nature of the allegations and the other circumstances peculiar to this case, the petitioner shall surrender all weapons, firearms, and ammunition, if any, along with the arms license to the concerned authority within fifteen days from release from prison and inform the Investigator about the compliance. However, subject to the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case, provided otherwise permissible in the concerned rules. Restricting firearms would instill confidence in the victim(s), their families, and society; it would also restrain the accused from influencing the witnesses and repeating the offense.

26. The conditions mentioned above imposed by this court are to endeavor to reform and ensure the accused does not repeat the offense and also to block the menace of drug abuse. In *Mohammed Zubair v. State of NCT of Delhi*, 2022:INSC:735 [Para 28], Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts, while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

27. In *Md. Tajiur Rahaman v. The State of West Bengal*, decided on 08-Nov-2024, SLP (Crl) 12225-2024, Hon'ble Supreme Court holds in Para 7, "It goes without saying that if the petitioner is found involved in such like offence in future, the concession of bail granted to him today will liable to be withdrawn and the petitioner is bound to face the necessary consequences."

28. This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

29. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

30. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

31. Petition allowed in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.01., 2025
smriti

Whether speaking/reasoned: Yes
Whether reportable: Yes.