



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

CRM-M-61451-2024
Date of decision: 24.02.2025

HARVINDER SINGH ALIAS KAKA

...PETITIONER

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ankit Kharbanda, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This is the third petition filed under Section 483 Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023 seeking regular bail in case bearing
FIR No.101 dated 03.07.2023 under Sections 22/29/25 of Narcotic Drugs and
Psychotropic Substances Act, 1985 (for short "NDPS Act") and Section 201 of
IPC registered at Police Station Kamboj, District (Amritsar Rural) (Annexure
P-1). The first petition was withdrawn on 21.02.2024 and the second petition
was withdrawn on 22.08.2024.

2. Brief facts of the case are that on 03.07.2023, when police party
was going towards village Pandori Waraich from Adda Bauli, two persons
were standing on the side of road, out of which, one was standing near an
Activa colour black bearing registration No.PB-02-ED-2879 and second one
was standing near a Three wheeler bearing registration No.PB-65-AC-6018
(T), out of them one hair cut young person was holding a black coloured
heavy polythene, in his right hand and another person wearing turban was also



holding a black polythene in his right hand. Upon seeing police party, they got scared and tried to run away alongwith their vehicles. Upon having doubt, the complainant ASI Jasbir Singh along with accompanied officials nabbed the young hair cut person, who was holding black coloured heavy polythene in his right hand and second person was nabbed by ASI Amar Singh 1189 with the help of accompanied officials. After separating the arrested persons, the complainant-ASI Jasbir Singh asked the name of the young hair cut person, who was holding a polythene bag in his right hand nabbed by him. He disclosed his name as Harvinder Singh *alias* Kaka (petitioner herein) son of Gurcharan Singh resident of Main Adda Pandori, District Amritsar and enquired about the substance lying in the black polythene bag, he said that boxes of tramadol tablets are lying in it. Before opening the black polythene, efforts were made to join some public witnesses in the police party, but everyone showed their inability and did not join the police party. Upon this, the complainant-ASI Jasbir Singh opened black polythene bag caught in the right hand of Harvinder Singh *alias* Kaka in front of accompanied officials and recovered 2 boxes of tramadol tablets and on counting 10 strips found in one box and 4 strips in another box and 10/10 tramadol tablets were in each strip and its colour was white and the batch number & expiry date written on the boxes were removed from the box and total 700 tablets of tramadol have been recovered. Thereafter, the complainant asked the name of second arrested person, who disclosed his name as Avtar Singh *alias* Atta Patu son of Balwant Singh, from whom 02 boxes of tramadol tablets i.e. 10 strips (each strip containing 10/10 tablets) of tramadol tablets, colour white were recovered. Hence, the FIR (*supra*) was registered.



3. Learned counsel for the petitioner submits that this is the third attempt in seeking regular bail to the petitioner. The first petition was withdrawn on 21.02.2024 and the second petition was withdrawn on 22.08.2024. The present petition has been filed on account of change in circumstances as co-accused, namely, Avtar Singh *alias* Ata Pattu has been granted the concession of regular bail vide order dated 14.01.2025 passed by this Court in **CRM-M-25639 of 2024** titled as **Avtar Singh alias Ata Pattu vs. State of Punjab** and on the ground of delay in conclusion of the trial. He contends that the petitioner has been falsely implicated in the present case and the mandatory provisions of NDPS Act have not been complied with. Further, no independent witness was joined at the time of conducting search. Learned counsel further submits that embargo under Section 37 of NDPS Act is dislodged in view of the protection provided by Article 21 of Constitution of India on account of delay in conclusion of the trial. The petitioner has already suffered incarceration of more than 01 year and 07 months and the prosecution has not been able to conclude its evidence.

4. Learned State counsel produces the custody certificate, which is taken on record and *per contra*, opposes the prayer made by the petitioner on the ground that the petitioner was apprehended at the spot and 700 tablets of Tramadol were recovered from him, which fall within the ambit of commercial quantity have been recovered from his conscious possession and 1000 tablets were recovered from the co-accused. Further, the petitioner is involved in one more case under the NDPS Act. However, he could not controvert the fact that he has undergone a total custody of 01 year, 07 months and 17 days.



5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 04.07.2023. The final report under Section 173 Cr.P.C. was presented before the concerned Court and subsequently, charges were framed. Currently, the trial is at the stage of prosecution witness and out of 15 PWs, only 02 have been examined till date. The petitioner has already undergone 01 year, 07 months and 17 days of custody and the delay in conclusion of trial cannot be attributed him.

6. 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.

7. 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 petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his 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)

8. The Hon'ble Supreme Court has repeatedly reiterated that the right to speedy trial as enshrined in Article 21 of the Constitution of India, is a fundamental concept in criminal jurisprudence and a *sine qua non* for proper administration of justice. It must be noted that ‘trial’ herein encompasses investigation, inquiry, trial, appeal, revision and retrial etc. i.e. everything commencing with the accusation to the final verdict of the last Court. Further still, it is trite law that no person can be deprived of his liberty except through a procedure that is reasonable, fair and just as such deprivation would amount to a direct violation of the fundamental right as enshrined in Article 21 of the Constitution of India. Be that as it may, curtailment of personal liberty to some extent cannot be avoided. However, if the period of deprivation pending trial becomes excessively long, the fairness as guaranteed under Article 21 of the Constitution of India would come into play and would also prevail over the embargo created by Section 37 of the NDPS Act. A reference in this regard can be made to the judgments rendered by the Hon'ble Supreme Court in *Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 1674, P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578, Babu Singh and others Vs. State of U.P., (1978) 1 SCC 579, Takht Singh and others Vs. State of M.P., (2001) 10 SCC 463; Special Leave to Appeal (Crl) No.2356 of 2010, Kushal Singh Vs. State of U.P. (2JJ.) and Fazal Vs. State of Uttar Pradesh, (2012) 5 SCC 752.*



9. As far as the issue of the petitioner being a habitual offender is concerned, the Hon'ble Supreme Court in *Prabhakar Tewari vs. State of U.P. 2020 (11) SCC 648* and *Maulana Mohd. Amir Rashadi vs. State of U.P. and another (2012) 2 SCC 382*, has categorically held that the grave and serious allegations leveled against the accused or pendency of other cases against him cannot be the only basis to refuse the prayer of bail.

10. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner- Harvinder Singh *alias* Kaka is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

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.

February 24, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No