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HR-85B-3044 on the asking of accused Satyam (the petitioner herein), Varis (the petitioner herein), Lakhan Kumar son of Vinod Kumar and Vicky son of Ashok Kumar and he would be bringing heavy quantity of Heroin and in case Nakabandi is laid, he can be apprehended. Upon secret information, *Nakabandi* was done and co-accused-Dishant Kumar was apprehended along with car bearing registration No.HR-85B-3044. From his possession commercial quantity of Heroin/Smack weighing 1 Kg 13 grams was recovered. On the basis of aforesaid allegations, FIR(supra) was registered.

4. Learned senior counsel for the petitioner(s) submits that this is first petition on behalf of petitioner, namely, Satyam Sood and second petition on behalf of petitioner, namely, Varis and first petition was dismissed as withdrawn on 19.11.2024. The present petition has been filed with the changed circumstances as co-accused, namely, Dishant Kumar, from whose possession the alleged contraband was recovered, has been granted the concession of regular bail by this Court vide order dated 29.04.2025 passed in CRM-M-12901-2025 titled as '*Dishant Kumar Vs. State of Haryana*'. He further submits that petitioner, namely, Varis has undergone total sentence of more than 01 year and 09 months, as such, his case is squarely covered by the judgment of the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023***, whereas, petitioner, namely, Satyam Sood has undergone total sentence of 07 months and 19 days. Admittedly, nothing has been recovered from the conscious possession of the petitioner(s). There is no evidence, either forensic or otherwise to connect the petitioner(s) with the alleged recovered contraband from the co-accused except the disclosure statement which has no evidentiary value in the eyes of law. It is



a trite law that the statements recorded by the police under Section 67 of NDPS Act would be hit by Sections 25 and 26 of Indian Evidence Act. He further submits that till date, out of 46 prosecution witnesses, only 01 witness has been examined and the delay in trial cannot be attributable to the petitioner(s) in any manner.

5. The learned State counsel has filed custody certificates in the Court today which are taken on record and per contra, opposes the grant of regular bail to the petitioner(s) on the ground that there is sufficient material on record to prove the complicity of the petitioners and keeping in view the antecedents of their criminal behaviour, they are not entitled to any relief. Further, the petitioners are involved in 10 cases each. However, he could not controvert the fact that in most of the cases, the petitioners are on bail.

6. A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. 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."

7. After perusing the record of the case with the assistance of the learned State counsel, it transpires that the petitioners, namely, Varis and Satyam Sood, are behind the bars since 26.09.2023 and 04.12.2024,



respectively. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as only 01 out of 46 prosecution witnesses has been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner(s).

8. 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.

9. 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(s)-accused. Keeping the petitioner(s) 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.***



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Jails are overcrowded and their living conditions, more often than not, appalling.” (emphasis added)

10 Keeping in view the law laid down by the Hon’ble Supreme Court of India in ‘*Prabhakar Tewari Vs. State of U.P. and another*’ 2020 (1) R.C.R. (Criminal 831) and ‘*Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another*’, 2012 (2) SCC 382, the involvement of the petitioner(s) in other cases would not be a ground to refuse grant of concession of regular bail.

11. In view the above, the present petitions are allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioners, namely, Varis and Satyam Sood, are ordered to be released on regular bail during trial on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

12. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

13. A photo copy of this order be placed on the file of connected case.

(HARPREET SINGH BRAR)
JUDGE

23.07.2025

Neha

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