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

CRM-M-40988-2025

Date of decision: 05.08.2025

Harpal Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Ms. Monika Tanwar, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This second petition has been filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking regular bail in case bearing FIR No.89 dated 13.10.2023 under Sections 21/23/29 of the NDPS Act registered at Police Station Bhindi Saidan, District Amritsar (Annexure P-1).
2. The FIR (*supra*) was registered on the basis of allegations levelled in the FIR which is reproduced as under:-

'While patrolling, when the Police Party reached Bhindi Aulakh Khurd, then a secret informer met and gave information to SI/SHO that Ajaypal Singh son of Balwinder Singh and Harpal Singh son of Jeewan Singh both resident of Lodhi Gujjar Police Station Lapoke, they have link with Pakistani smugglers. In connivance with each other they both smuggle heroin from Pakistan and sell here. That today Ajaypal Singh and Harpal Singh on their motorcycle bearing no. PB 02-CS-4937 make CT 100 of black colour, went to village Bhindi to buy heroin. Who purchases heroin from his co-smugglers and for supply they are returning to village Lodhi Gujjar Police Station Lapoke. If both will be apprehended and searched, then heroin can be recovered. As the information is credible and reliable, I SI/SHO briefed the fellow employees and start barricading at the turn of Bhindi Nain, border side and start checking the vehicles. Then 2 youngsters came on one motorcycle bearing no. PB- 02-CS-4347 mark CT 100 of black colour, on seeing Police Party the rider of the motorcycle immediately started taking u turn. On which Police Party apprehended both the Youngsters and asked their name and address then the motorcycle rider told his name as Harpal Singh son of Jeewan Singh resident of Lodhi Gujjar Police Station Lapoke And the pillion rider told his name as Ajaypal Singh son of Balwinder Singh resident of Lodhi Gujjar Police Station



Lapoke District Amritsar. To whom SI/SHO told my name, rank, and deployment and told that I have Pususpicion that you have heroin. So you will be searched but you have legal rights if you want your search by Gazetted Police officers or any other gazetted officer or by Magistrate, then I can make arrangements. On which Ajaypal Singh and Harpal Singh said together to I SI/SHO that we want to be searched by Gazetted Police officer, on which separate consent memo of Ajaypal Singh and Harpal Singh were prepared, signature of witnesses were taken on memo. Ajaypal Singh and Harpal Singh signed the memo Then I SI/SHO called Shri. Gurinderpal Singh PPS Deputy Superintendent of Police Sub Division Atari District Amritsar via phone and informed about the situation and requested to come at the spot, after some time Gurinderpal Singh PPS Deputy Superintendent of Police Sub Division Atari on Government vehicle along with personal staff reached at the spot and introduced himself, his name, rank, deployment to Ajaypal Singh and Harpal Singh and told that I am wearing uniform, my name plate is attached, I am gazetted officer of Punjab Police. I have a suspicion that you have heroin. You will be searched but you have legal rights if you want your search by me or any other gazetted officers or by Magistrate so I can make arrangements. On which Ajaypal Singh and Harpal Singh said together to DSP that we trust you and you can search us on which separate consent memo of Ajaypal Singh and Harpal Singh prepared Signatures of witnesses were taken on the memo. Ajaypal Singh and Harpal Singh signed the memo. Before searching Ajaypal Singh and Harpal Singh Police Party tried to involve public witness but no passer-by joined the Police Party. Everyone shows their compulsion goes from there. Then I SI/SHO get search instructions from DSP and searched Ajaypal Singh and Harpal Singh turn by turn. Then from Ajaypal one small bottle which was filled by heroin, tied around his waist was recovered. The recovered plastic bottle was weighed on an electronic weighing machine, which weighed 300 grams along with the bottle. The parcels of recovered heroin was prepared and I sealed it with my stamp JS and DSP sealed it with his stamp GPS. The sample stamp was prepared separately. After use I SI/SHO handed over stamp to ASI Lakhwinder Singh 205 and after use DSP kept his stamp along with him. The recovered heroin was taken into Police Custody by a separate memo. Then on searching Harpal Singh 200 Rs Note of Indian currency was recovered from the right pocket of the pent worn by him which was taken into the Police Custody by a separate memo. Recovered motorcycle bearing no. PB-02-CS-4347 mark CT100 of black colour was taken into Police Custody as evidence by separate memo. Ajaypal Singh and Harpal Singh had committed offences under section 21/23/29/61/85 NDPS Act by keeping heroin in their possession. On which rukka was prepared and sent manually through the hands of PHG Ashok Kumar 3648 to the Police Station for registration of the FIR'

3. Learned counsel for the petitioner submits that this is second petition for regular bail and first petition was withdrawn on 23.01.2025. Further, the present petition has been filed on the ground that the case of the petitioner is now 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.

She further submits that as per the case set up by the prosecution, the contraband has been recovered from the conscious possession of co-accused, namely, Ajaypal Singh. Nothing has been recovered from the petitioner. The petitioner was not having the knowledge that the co-accused is carrying 300 grams of *heroin*. Further, the mental element *qua* the conscious possession of the petitioner is a debatable issued. The petitioner is not involved in any other case and has undergone actual custody of 01 year, 09 months and 19 days and till date, out of total 15 prosecution witnesses, only 04 witnesses have been examined.

4. The learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the grant of regular bail to the petitioner on the ground that complicity of the petitioner is duly established during investigation. However, he could not controvert the fact that the petitioner is behind the bars for the last 01 year, 09 months and 19 days and only 04 prosecution witnesses have been examined so far.

5. 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.”

6. After perusing the record of the case with the assistance of the learned State counsel, it transpires that the petitioner is behind the bars since 16.10.2023. 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 04 out of 15 prosecution witnesses 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 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)

9. In view the above, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Harpal Singh, 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.

10. 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.

(HARPREET SINGH BRAR)
JUDGE

05.08.2025

Neha

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