

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63571-2024 (O&M)

Date of decision: 07.01.2025

Baljinder Singh @ Kalu @ Don

...Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Barjinder Singh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. This is the third petition under Section 439 of Cr.P.C. for grant of regular bail in case bearing FIR No. 125 dated 01.07.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Shahkot, District Jalandhar Rural.

2. On 01.07.2019, the police party was patrolling the area of Kotli Gajran in a private vehicle when they saw the petitioner walking on foot, carrying a plastic bag in his right hand. He was apprehended on suspicion and his consent to search him was obtained. Consequently, 100 strips of Clovidol-100, with 10 tablets in each strip, were recovered. Subsequently, a *ruka* was sent and FIR (supra) was registered against the petitioner. On chemical analysis, it was found that the recovered contraband contained 409 gms of Tramadol.

3. Learned counsel for the petitioner *inter alia* contends that the present petition is the third attempt by the petitioner to seek grant of regular bail and has been filed on account of delay in conclusion of trial. The first and second petitions were dismissed as withdrawn vide orders dated 05.01.2024

and 18.09.2024, respectively. He further contends that the police party has failed to comply with Sections 42, 50, 52-A, 57 of the NDPS Act, which are mandatory in nature, thus vitiating the entire search. Curiously, the documents which were prepared on the spot of the alleged occurrence i.e. recovery memo, site plan etc, bear the details of the FIR, which was registered later in time. Finally, the petitioner has already undergone custody of 1 year 5 months and 17 days. The delay in conclusion of trial cannot be attributed to the petitioner and as such, he deserves the concession of bail. Reliance in this regard is placed on the judgments of 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*, *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 *Chitta Biswas @ Subhas Vs. The State of West Bengal SLP(Crl.) No. 8823/2019*.

4. Further, 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 appellants deserve 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)*

5. *Per contra*, learned State counsel files the custody certificate, which is taken on record, and opposes the prayer made by learned counsel for the petitioner on the ground that the petitioner is a habitual offender and even in the FIR(supra) serious and specific allegations have been leveled against the petitioner. However, he could not controvert the fact that till date only 3 prosecution witnesses have been examined and that the petitioner is on bail in the other case registered against him i.e. FIR bearing No. 50 dated 08.04.2019 registered under Section 21 of the NDPS Act at Police Station Dharamkot, District Moga.

6. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars for almost 1 year 6 months. Moreover, out of a total of 09 prosecution witnesses, only 03 have been examined so far. It is established that culpability, if any, would be determined on conclusion of the trial.

7. 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.*

8. 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.

9. In view of the above, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to his furnishing bail bonds/surety bonds to the satisfaction of concerned Court.

10. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case lest it may prejudice the trial. The trial Court is also directed to proceed with the trial on its own merits.

(HARPREET SINGH BRAR)
JUDGE

07.01.2025

Ajay Goswami

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