



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

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CRM-M-59440-2024 (O&M)

Date of decision: 25.02.2025

Veerpal Kaur

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this 2nd petition filed under Section 439 Cr.P.C. (483 of the BNSS, 2023), is for grant of regular bail to the petitioner in FIR No.95 dated 28.07.2023 registered under Section 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Sangat, District Bathinda.

2. The 1st petition filed by the petitioner seeking regular bail was dismissed as withdrawn on 16.05.2024.

3. Learned counsel for the petitioner submits that the new ground for filing this 2nd petition is that there is a delay in conclusion of the trial and the petitioner has suffered incarceration of more than 18 months and the prosecution has not been able to conclude its evidence till date.

4. As per the prosecution case, on 28.07.2023 ASI Nirmaljit Singh In-charge of Police Post Pathrala P.S. Sangat was on patrolling



duty along with the police party and he was going from main road Bathinda to Dabhawali towards village Ruldu Singh Wala and in meanwhile, at about 06:40 AM, one women was seen standing near the Bus stand carrying a bag of black colour in her hand. On the basis of suspicion she was apprehended and was identified as present petitioner. Thereafter the Investigating Officer of the case ASI Nirmaljit Singh extended the offer under Section 50 of the NDPS Act, for conducting the personal search of the petitioner and search of the black bag held by her was given and on her denial for the search, the Deputy Superintendent of Police Bathinda (Rural) was called at the spot and in his presence search of the black bag held by petitioner and her personal search was conducted and on opening of the zip of the black bag 18 boxes of tablets make CLOVEDOL-100 SR Tramadol Hydrochloride Tablets USP 100 mg were recovered and each box was having 10 strips and each strip having 50 tablets total 500 intoxicating tablets in box and thereby, total 9000 tablets in all the boxes were recovered. Thereafter, the FIR (supra) was registered.

5. Learned counsel for the petitioner *inter alia* contends that till date, the prosecution has not been able to conclude its evidence. He further submits that delay in conclusion of the trial violates the petitioner's right to a speedy trial, as guaranteed under Article 21 of the Constitution of India. He submits that such inordinate delays, particularly in a case where the prosecution has yet to conclude its



evidence, amount to an undue hardship on the petitioner, who has already endured more than 18 months of detention.

6. Learned counsel for the petitioner further submits that the petitioner is not involved in any other case and there are total 11 prosecution witnesses cited in the list of witnesses, out of which, only 01 PW has been examined till date and the trial is likely to take long time in conclusion.

7. *Per contra*, learned State counsel has filed custody certificate and status report by way of affidavit of Heena Gupta, Deputy Superintendent of Police, Sub-Division (Rural) Bathinda, today in the Court which are taken on record and he opposes the prayer made by learned counsel for the petitioner on the ground that huge quantity of contraband was recovered from the conscious possession of the petitioner, which falls within the ambit of commercial quantity and as such, the petitioner is not entitled for any relief, however, he could not controvert the fact that the petitioner is not involved in any other case and out of 11 PWs, only 01 PW has been examined so far.

8. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars from the last 01 years, 06 months and 25 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 11 prosecution witnesses, only 01 PW has been examined so far.



9. 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.

10. 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 her 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)

11. A two Judge Bench of Hon’ble Supreme Court in **“*Satender Kumar Antil vs. 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.”

12. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Veerpal Kaur, is ordered to be released on regular bail during pendency of the trial, on her furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.



13. 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.

(HARPREET SINGH BRAR)
JUDGE

25.02.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No