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sake of brevity, the facts are taken from CRM-M-64549-2024.

The present petition(s) has been filed under Section 439 of Cr.P.C. seeking regular bail in case bearing FIR No.158 dated 26.09.2023 under Section 22 of the NDPS Act, registered at Police Station Dhanaula District Barnala.

The FIR (*supra*) was registered on the basis of secret information that the accused/petitioner(s) who are engaged in selling intoxicating tablets, will supply the same at Animal Mandi Dhanaula to their clients and the information was found credible and correct and on the basis of the alleged recovery, the FIR (*supra*) was registered.

Learned counsel for the petitioner(s) submits that this is the third attempt in seeking the concession of regular bail. The second petition was dismissed as withdrawn on 02.07.2024 and the present petition has been preferred as the case of the petitioner(s) is squarely covered by the judgment of the Hon'ble Supreme Court passed in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023.***

Learned counsel for the petitioner(s) submits that till date, the prosecution has only examined 03 witnesses out of 10 and the petitioners have undergone more than 01 year 07 months and 15 days of actual custody. He further submits that except petitioner, namely, Happy Singh, who is on bail in another case under Sections 457/380/411 of IPC, petitioners, namely, Mandeep Singh @ Babbi and Hardeep Singh @ Gaggu are not involved in any other case.

The learned State counsel has filed custody certificates in the Court



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today which are taken on record and per contra, opposes the grant of regular bail to the petitioner(s) on the ground that 1000 intoxicating loose tablets have been recovered from the conscious possession of the petitioner(s) and thus, they are not entitled to any relief. However, he could not controvert the fact that the petitioner(s) are behind the bars for the last 01 year, 07 months and 15 days and only 03 prosecution witnesses have been examined so far.

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.”

After perusing the record of the case with the assistance of the learned State counsel, it transpires that the petitioner(s) are behind the bars



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since last 01 year, 07 months and 15 days. 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 03 out of 10 prosecution witnesses have 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).

A two Judge bench of the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal (supra)*** 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***



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@ 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.

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 their 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.*



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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)

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.

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, Mandeep Singh @ Babbi, Hardeep Singh @ Gaggu and Happy Singh, 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.

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.

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

(HARPREET SINGH BRAR)
JUDGE

14.05.2025

Neha

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