





petitioner was arrested on 16.03.2023 i.e. more than two years ago and has been in custody ever since. Although the investigation has been completed, the charges have not been framed till date due to the repeated non-appearance of the investigation officer. Despite the issuance of multipleailable warrants against the investigating officer, he has failed to put an appearance before the trial Court. Furthermore, there are a total of 17 prosecution witnesses in the present case and given the current pace of the proceedings, it will take an inordinate amount of time for the conclusion of the trial. Lastly, learned counsel submits that the petitioner has clean antecedents and has cooperated with the investigation agency at every stage.

5. Learned State counsel has filed the custody certificate of the petitioner, which is taken on record and submits that a huge quantity of Ganja was recovered from the car, which was being driven by the petitioner. The contraband recovered from the car was procured for further sale. Further, he has undergone a custody period of 02 years and 12 days only. Therefore, in view of the grave nature of the allegations, the petitioner does not deserve the concession of regular 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 petitioner is behind the bars since 16.03.2023. The investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court, however, the trial of the case has not made much progress as lamentably charges have not been framed against the petitioner till date. 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.

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. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his right 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)

10. The foundational concept of the criminal jurisprudence is to ensure speedy trial. The Hon'ble Supreme Court has repeatedly reiterated that right to speedy trial is enshrined in Article 21 of the Constitution of India. Speedy trial would cover investigation, enquiry, trial, appeal, revision and retrial etc. i.e., everything starting with the accusation against the accused and expiring with the final verdict of the last Court.

11. It has further been held in law that if a person is deprived of his liberty under a procedure which is not reasonable, fair, or just, such deprivation would be violative of his fundamental right under Article 21 of the Constitution of India. The procedure so prescribed must ensure speedy trial for determination of the guilt of such person. Some amount of denial of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes excessively long, the fairness guaranteed by Article 21 of the Constitution of India would come into play.

12. In this regard, reference is being made to the law laid down by the Hon'ble Supreme Court in the context of right to speedy trial under Article 21 of the Constitution of India on the following decision:- **Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh Alias Shingara Singh vs. State of Punjab, (2005) SCC (Cr1) 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.**

13. Ergo, I am inclined to allow the prayer of the petitioner. Accordingly, the present petition is allowed. The petitioner-Hari Om @ Haiom is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Trial Court/Duty Magistrate.

14. The present petition seeking regular bail to the petitioner is allowed solely on the ground of long custody already undergone by him and without commenting on the merits of the case lest it may prejudice the outcome of the case pending before the trial Court.

15. 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.

16. Before parting with this order, this Court would like to point out that a Co-ordinate Bench of this Court has previously taken note of a distressing pattern in the State of Punjab, where trials under the NDPS Act have been repeatedly delayed due to the non-appearance of prosecution witnesses. However, this issue is not confined to Punjab alone. A similar but a more pronounced trend has also emerged in the State of Haryana, where the repeated failure of prosecution witnesses to appear before the Trial Court has led to unwarranted delays in the adjudication of cases. Such systemic lapses not only obstruct the course of justice but also directly impinge upon the fundamental rights of the accused. Given the gravity of the matter and its implications for



the administration of justice, this Court finds it imperative to intervene and ensure that the constitutional mandate of a fair and expeditious trial is upheld.

17. The records from the Trial Court reveal that cases under the NDPS Act have been repeatedly adjourned due to the absence of prosecution witnesses, most of whom are police officials. This has led to unjustified and prolonged delays in the trial, entirely due to the negligence of the prosecution, thereby infringing upon the petitioners' fundamental right to a speedy trial and their personal liberty as guaranteed under Article 21 of the Constitution of India.

18. The right to a speedy trial is an essential facet of the fundamental right to life and personal liberty enshrined under Article 21 of the Constitution of India. The Hon'ble Supreme Court has repeatedly emphasized that unjustified delays in criminal trials amount to a violation of this cherished right, as prolonged incarceration without conclusion of proceedings subjects an accused to unnecessary hardship, mental agony, and social stigma. The principle of speedy trial is rooted in the broader framework of justice, ensuring that individuals are not indefinitely deprived of their freedom due to systemic inefficiencies or prosecutorial lapses. Any delay in the judicial process not only prejudices the rights of the accused but also weakens public confidence in the legal system. It is the duty of the State to ensure that trials are conducted efficiently, as unnecessary delays lead to prolonged incarceration, which, in itself, becomes a form of punishment before conviction. Therefore, any failure on the part of the prosecution to secure the attendance of witnesses, particularly police officials, must be viewed as an infringement of this fundamental right, warranting strict accountability and corrective measures.

19. Strict compliance with procedural mandates and the timely disposal of cases under the NDPS Act are of paramount importance, given the



grave menace that narcotic substances pose to society. The illicit trade and consumption of drugs have far-reaching social and economic consequences, fueling crime, endangering public health, and undermining societal stability. Recognizing the severity of the issue, the legislature in its wisdom has imposed stringent provisions under the NDPS Act to ensure that offenders are brought to justice without undue delay. Any laxity in the prosecution of such cases not only weakens the deterrent effect of the law but also emboldens those engaged in drug-related offenses. It is, therefore, imperative that trials under this Act are conducted with utmost urgency, ensuring both the swift punishment of the guilty and the protection of the innocent from prolonged incarceration.

20. Since this Court cannot remain oblivious to the seriousness of this issue, the Director General of Police, Haryana, is accordingly directed to submit an affidavit explaining the consistent failure of prosecution witnesses, particularly police personnel, to appear in court for cases under the NDPS Act. This malady further adds to the already mounting backlog of cases. Such persistent dereliction of duty erodes the integrity of the judicial process and deprives the accused of their fundamental right to a fair and timely trial.

21. As also pointed out by the Co-ordinate Bench of this Court in CRM-M-15873 and 21460-2024, authorities must take immediate and effective measures to rectify this situation. Any continued negligence on the part of the prosecution will not be condoned, and the State counsel will find it difficult to oppose bail applications in cases where the accused remain incarcerated solely due to the failure of the prosecution to discharge its responsibilities and ensure timely disposal of cases. If such delays persist, they will severely weaken the case of the prosecution and diminish the ability of the State to ensure the fair administration of justice.



22. Consequently, the Director General of Police, Haryana, is directed to file his affidavit without fail by the next date of hearing, detailing the reasons for the non-appearance of prosecution witnesses and specifying the corrective measures being taken to address this issue.

23. For further consideration, list on 15.05.2025.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**27.03.2025**

*Neha*

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