



CRM-M-30777-2025 (O&amp;M)

1

231 IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRM-M-30777-2025 (O&amp;M)

Date of Decision: 03.07.2025

RAJAN KUMAR

...PETITIONER

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surinder Singh Duhan, Advocates  
for the petitioner.

Mr. Nitesh Sharma, DAG Punjab.

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**Harpreet Singh Brar, J. (Oral)**

1. This the first petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') for grant of regular bail to the petitioner in case bearing FIR No. 164 dated 23.11.2022 registered Sections 22, 61 and 85 of NDPS Act, 1985 at Police Station Gidderbaha, District Sri Muktsar Sahib, Punjab.

2. Brief facts of the case are that the petitioner was apprehended with 59 tablets of Etizolam-0.5 mg and 110 tablets of Tramadol Hydrochloride 100 mg.

3. Learned counsel for the petitioner *inter alia* contends that similarly situated co-accused Sandeep Kumar has been granted the concession of regular bail by a Co-ordinate Bench of this Court vide order dated 29.11.2024 (Annexure P-2) passed in CRM-M-58587-2024. The petitioner has suffered incarceration of 02 years 07 months and 08 days and till date the prosecution has only examined 05 PWs out of total 19 prosecution witnesses and as such the case of the petitioner is squarely covered by the ratio of law laid down by Hon'ble Supreme Court in *Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023*.



**CRM-M-30777-2025 (O&M)**

**2**

4. Learned State counsel produces the custody certificate of the petitioner, which is taken on record and *per contra*, opposes the grant of regular bail to the petitioner on the ground that petitioner is not entitled to any relief as contraband falling within the ambit of commercial quantity has been recovered from the conscious possession of the petitioner and case of the petitioner is not at par with the co-accused, who has been granted regular bail by the Co-ordinate Bench of this Court, as the said co-accused was having clean antecedents whereas the present petitioner is also involved in 03 more cases. However, he could not controvert the fact that petitioner has suffered incarceration of 02 years 07 months and 08 days and till date the prosecution has not been able to conclude its evidence.

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. 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 02 years 07 months and 08 days as on 02.07.2025. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned



CRM-M-30777-2025 (O&M)

3

Court and trial of the case will take considerable long time to conclude as out of total 19 prosecution witnesses, only 05 have been examined till date. No useful purpose shall be served by further detention of the accused/petitioner.

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 @ Nasirdin 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*.



CRM-M-30777-2025 (O&amp;M)

4

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)*



**CRM-M-30777-2025 (O&M)**

**5**

9. In view of the ratio of law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR (Criminal) 831 and **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

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

11. 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**

**03.07.2025**

*Ajay Goswami*

*Whether speaking/reasoned*  
*Whether reportable*

*Yes/No*  
*Yes/No*