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IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRM-M-23089-2025 (O&amp;M)

Date of Decision: 06.05.2025

MOHD. ASIF @ AASIF

...PETITIONER

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Angad Parmar, Advocate for

Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavata, AAG Haryana.

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

1. This is the first petition filed under Section 483 of Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in case bearing FIR No. 166 dated 19.10.2023 registered under Sections 18 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 27 of NDPS Act added later on) at Police Station GRP Ludhiana, District Ludhiana.

2. Summarily, the facts of the case are that on 19.10.2023 at around 10:00 A.M., the police officials were patrolling near Railway Station, Ludhiana. During the course of their patrolling, they observed a boy carrying a black rexine bag and a woman carrying a blue rexine bag. Upon noticing the presence of the police party, both individuals attempted to flee. However, they were apprehended by the police and upon search, it was found that each bag contained 06 kilograms of opium. Consequently, the aforementioned FIR was registered.

3. Learned counsel for the petitioner *inter alia* contends that identically placed co-accused Khataun Begum @ Khatun has been granted the



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concession of regular bail by this Court vide order dated 24.04.2025 passed in CRM-M-1812-2025 (Annexure P-5). The petitioner has suffered incarceration for more than 01 year and 06 months and till date the prosecution has not been able to examine even a single witness. Further, 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.*** Learned counsel further submits that petitioner is not involved in any other case under the NDPS Act.

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 there is sufficient material available on record to prove the complicity of the petitioner and the alleged contraband falls within the ambit of commercial quantity and thus, the petitioner is not entitled to any relief. However, he could not controvert the fact that he is not involved in any other case under the NDPS Act and not even a single prosecution witness has been examined so far and similarly situated co-accused has been granted the concession of regular bail by this Court.

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*



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*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 01 year 06 months and 08 days as on 05.05.2025. 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 not even a single prosecution witness has 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.

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 @ Pighu 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 @ Nasird-***



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*din 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.*

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*



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*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)

9. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Mohd. Asif @ Aasif 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.

10. 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**

06.05.2025

Ajay Goswami

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No