



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

**CRM-M-64980-2024**  
**Date of decision: 04.04.2025**

**BHIM KUMAR YADAV**

**...PETITIONER**

**V/S**

**STATE OF PUNJAB**

**...RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Ms. Neha Shukla, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

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**HARPREET SINGH BRAR, J. (ORAL)**

1. This is the third petition filed under Section 483 Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 seeking regular bail in case bearing FIR No.124 dated 31.07.2022 under Sections 22/61 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") registered at Police Station Lalru, District SAS Nagar (Mohali), Punjab. The first petition was withdrawn on 24.04.2024 and the second petition was withdrawn on 02.09.2024.

2. The brief facts of the prosecution case in nut shell are that on 31.07.2022, the police party headed by SI Rajinder Singh was present in the area of Lalru in connection with patrolling for checking of bad elements. At about 1.45 P.M., when police party was checking vehicles at near Gurudwara Sahib Lelhi on Ambala-Chandigarh highway, one young boy carrying backbag was seen coming from Ambala side who on seeing the police party tried to turn back. On suspicion he was apprehended and his antecedents were enquired. After completing all the formalities under law, search of suspect



Bhim Kumar Yadav (petitioner herein) was conducted and from the polythene bag carried by him 985 strips of LOMOTIL each containing 60 tablets total 59100 tablets were recovered. He could not produce any permit or licence, as such, he was arrested in the present case and the FIR (*supra*) was registered.

3. Learned counsel for the petitioner submits that this is the third attempt in seeking regular bail to the petitioner. The first petition was withdrawn on 24.04.2024 and the second petition was withdrawn on 02.09.2024. The present petition has been filed on account of the fact that the petitioner has suffered incarceration of more than 02 years and 08 months and there is a delay in conclusion of the trial as the prosecution has failed to conclude its evidence. She contends that the petitioner has been falsely implicated in the present case and the mandatory provisions of NDPS Act have not been complied with. Learned counsel further submits that embargo under Section 37 of NDPS Act is dislodged in view of the protection provided by Article 21 of Constitution of India on account of delay in conclusion of the trial. The petitioner has already suffered incarceration of more than 02 years and 08 months and the prosecution has not been able to conclude its evidence.

4. Learned State counsel produces the custody certificate, which is taken on record and *per contra*, opposes the prayer made by the petitioner on the ground that huge quantity of 59100 tablets of Lomotil were recovered from the possession of the petitioner, which falls under the ambit of commercial quantity. However, he could not controvert the fact that the petitioner is not involved in any other case and till date only 06 prosecution witnesses, out of total 12 have been examined.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since



03.08.2022. The final report under Section 173 Cr.P.C. was presented before the concerned Court and subsequently, charges were framed. Currently, the trial is at the stage of prosecution witness and out of 12 PWs, only 06 have been examined till date. The petitioner has already undergone 02 years and 08 months of custody and the delay in conclusion of trial cannot be attributed him.

6. 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.*

7. 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)

8. The Hon'ble Supreme Court has repeatedly reiterated that the right to speedy trial as enshrined in Article 21 of the Constitution of India, is a fundamental concept in criminal jurisprudence and a *sine qua non* for proper administration of justice. It must be noted that 'trial' herein encompasses investigation, inquiry, trial, appeal, revision and retrial etc. i.e. everything commencing with the accusation to the final verdict of the last Court. Further still, it is trite law that no person can be deprived of his liberty except through a procedure that is reasonable, fair and just as such deprivation would amount to a direct violation of the fundamental right as enshrined in Article 21 of the Constitution of India. Be that as it may, curtailment of personal liberty to some extent cannot be avoided. However, if the period of deprivation pending trial becomes excessively long, the fairness as guaranteed under Article 21 of the Constitution of India would come into play and would also prevail over the embargo created by Section 37 of the NDPS Act. A reference in this regard can be made to the judgments rendered by the Hon'ble Supreme Court in *Akhtari Bi Vs. State of M.P., (2001) 4 SCC 355, Surinder Singh alias Shingara Singh Vs. State of Punjab, (2005) SCC (Crl) 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.*

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



Bhim Kumar Yadav is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

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.

**April 04, 2025**  
*manisha*

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

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|------|---------------------------|--------|
| (i)  | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable        | Yes/No |