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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 10.01.2025

Kulwinder

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Viren Sibal, Advocate for the petitioner.

Ms. Avneet, AAG Punjab.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C./483 of the Bharatiya Nagrik Suraksha Sanhita for grant of regular bail to the petitioner in case bearing FIR No.0123 dated 15.04.2022, registered for the offences punishable under Sections 22, 61 & 85 of the NDPS Act at Police Station City Ferozepur City, District Ferozepur.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“Station House Officer, City Ferozepur, Sat Sri Akal, Today along with Inspector ASI Narinderpal No. 628/FIRO- ASI Rajpal No. 1235/FIRO, HC Joginder Singh No. 145/FIRO, Lady Senior Constable Kulbir Kaur No. 50/FIRO PHG Sandeep Singh No. 22759 on a Government Vehicle No. PB05-R-9848 whose driver ASI Sukhdev Singh No. 365/FIRO were Patrolling and checking in relation to suspicious men, in the area of the Police station Cantt Ferozepur and the police station City Ferozepur. When the police party reached Bagdadi Gate in Ferozepur city while patrolling, the informant stopped my vehicle by signalling and pulled me over to the side and informed me that Kulwinder son of Ruldu, resident of Janta Preet Nagar, Ferozepur City, who used to selling narcotic pills, who is still standing in an empty place adjacent to the Rai Sikh Bhawan built on Kacha Jira Road to sell narcotic pills to customers. If we go to that

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place now and check it, a large quantity of narcotic pills can be recovered from Kulwinder. This information is solid, reliable and solid. Keeping and selling narcotic pills in his possession by the above Kulwinder fulfils the definition of crime 22 of the NDPS Act. Therefore, a case against Kulwinder under Section 22 of the NDPS Act is written and sent to the police station through Lady Senior Constable Kulbir Kaur No. 50/ FIRO. The case should be registered and the case number should be informed. Special reports should be sent to the service of the Area Magistrate and officers. PCR should be informed. I am the Inspector along with my fellow employees of the Bhairahawa Road, informant. Today, Baghdadi Gate, Ferozepur City, at 4.15 PM, Parminder Singh INSP, In charge, Narcotic Control Cell, Ferozepur, Dated 15.04.2022 Today, a case has been registered against the accused in the above mentioned police station, Mosul, and a copy of the FIR has been registered, alongwith the original FIR, in the possession of Arinda Lady, Senior Constable, Near the INSP, for investigation. Special reports are being prepared and sent to the service of the Ld. Area Magistrate Sahib, and higher officials, through CT Gurpreet Singh No. 968/FERO, Wireless Message is sent to the PCR. ”

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further submitted that no recovery, as alleged in the prosecution case, was effected from the petitioner and rather he was picked up by the Police official from his residence and implicated into a false case. Learned counsel has further submitted that the mandatory provisions of Section 42 and Section 50 of NDPS Act of 1985 have not been complied with and, therefore, the prosecution case suffers from material discrepancies. Learned counsel has further submitted that no independent witness was ever enjoined in the case and no explanation has been rendered for non-joining of the independent witness. Learned counsel has further referred, *in extenso*, to the zimni/interim orders passed by the trial Court, especially orders dated 27.02.2023, 10.04.2023, 05.02.2024, 02.08.2024, 03.09.2024, 16.10.2024,

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19.11.2024 & 27.11.2024 to argue that there is delay in culmination of the trial and the same is not attributable to the petitioner. Thus, learned counsel has prayed for grant of regular bail to the petitioner.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel has further submitted that the FIR in question pertains to recovery of 99.876 grams of Etizolam salt which is a commercial quantity and, therefore, the bar under Section 37 of the NDPS, 1985 is attracted. Learned State counsel has filed the custody certificate dated 08.01.2025 in Court today and has relied upon the involvement of the petitioner in 03 other cases viz. 02 under the Excise Act and 01 being under the NDPS Act for which the petitioner stands convicted for one month. She has, accordingly, sought for dismissal of the petition in hand.

5. I have heard counsel for the rival parties and have gone through the available records of the case.

6. The petitioner was arrested on 15.04.2022 whereinafter investigation was carried out and challan stands presented on 10.10.2022. Charges in the trial in question were framed on 23.11.2022. Total 10 prosecution witnesses have been cited, out of which only 03 have been examined till date. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question, whether mandatory provisions of Section 42 and Section 50 of the NDPS Act of 1985 have been complied with or not & the weightage/veracity of the evidence brought by the prosecution alongwith challan (final report);

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are issues of contentious nature which are essentially required to be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence.

7. There is another aspect *may* vital aspect of the matter in hand which craves for attention of this Court.

7.1. Long back, in ***Hussainara Khatoon vs. Home Secy., State of Bihar*** reported as (1980) 1 SCC 81, the Hon'ble Supreme Court had declared that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21 as interpreted by this Court". Remarking that a valid procedure under Article 21 is one which contains a procedure that is "reasonable, fair and just" it was held that:

"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."

7.2. The Hon'ble Supreme Court in a judgment titled as ***Abdul Rehman Antulay vs R.S. Nayak*** reported as (1992) 1 SCC 225 has re-



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emphasized the right to speedy trial, and further held that an accused, facing prolonged trial, has no option:

“The State or complainant prosecutes him. It is, thus, the obligation of the State or the complainant, as the case may be, to proceed with the case with reasonable promptitude. Particularly, in this country, where the large majority of accused come from poorer and weaker sections of the society, not versed in the ways of law, where they do not often get competent legal advice, the application of the said rule is wholly inadvisable. Of course, in a given case, if any accused demands speedy trial and yet he is not given one, may be a relevant factor in his favour. But we cannot disentitle an accused from complaining of infringement of his right to speedy trial on the ground that he did not ask for or insist upon a speedy trial.”

7.3. The Hon’ble Supreme Court in a judgment titled as ***Javed Gulam Nabi Shaikh vs. State of Maharashtra and another, 2024(3) RCR (Criminal) 494*** has held as under:

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

189. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an



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accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.”

7.4. The Hon’ble Supreme Court; while dealing with a bail plea in respect of a case under NDPS Act pertaining to commercial quantity contraband; in a judgment titled as ***Mohd Muslim @ Hussain vs. State (NCT of Delhi)*** reported as 2023 INSC 311, has observed as under:

“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. According to the Union Home Ministry’s response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,068 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner vs. State reported in 1993 Cri LJ 3242, as a “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal” (also see Donald Clemmer’s ‘The Prison Community’ published in 1940). Incarceration has further deleterious effect - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of



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families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

7.5. The Hon’ble Supreme Court; in a bail plea under NDPS Act pertaining to commercial quantity; in ***Criminal Appeal No.245/2020 dated 07.02.2020*** titled as “***Chitta Biswas Alias Subhas vs. The State of West Bengal***” has held as under:-

“Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out.”

7.6. The Hon’ble Supreme Court; in a bail plea under NDPS Act pertaining to commercial quantity; titled as “***Nitish Adhikary @ Bapan Vs. The State of West Bengal***” has held as under:-

“As per the office report dated 29.07.2022, copy of the show cause notice along with Special Leave Petition was supplied to the Standing Counsel for the State of West Bengal and separate notice has been

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served on the State also. However, no one has entered appearance on their behalf.

The petitioner seeks enlargement on bail in F.I.R. No.612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37 of the NDPS Act, registered at Police Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.

The petitioner is accordingly, directed to be released on bail subject to him furnishing bail bonds to the satisfaction of the Trial Court.”

7.7. To the similar effect is the ratio decidendi of the judgments of the Hon’ble Supreme Court in **Special Leave to Appeal (Crl.) No.5530-2022** dated 22.08.20223 titled as **“Mohammad Salman Hanif Shaikh vs. The State of Gujarat”**; **Criminal Appeal No.1169 of 2022** dated 05.08.2022 titled as **Gopal Krishna Patra @ Gopalrusma Vs. Union of India** and **Ankur Chaudhary vs. State of Madhya Pradesh 2024(4) RCR (Criminal) 172**

7.8. The right to a speedy and expeditious trial is not only a vital safeguard to prevent undue and oppressive incarceration; to mitigate anxiety and concern accompanying the accusation as well as to curtail any impairment in the ability of an accused to defend himself, but there is an overarching societal interest paving way for a speedy trial. This right has been repeatedly actuated in the recent past and the ratio decidendi of the above-referred to Supreme Court’s judgments have laid down a series of

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decisions opening up new vistas of fundamental rights. The concept of speedy trial is amalgamated into the Article 21 as an essential part of the fundamental right to life and liberty, guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed at the time of the arrest of the accused and consequent incarceration which continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result due to impermissible and avoidable delay since the time of the commission of the offence till the criminal proceedings consummate into a finality, could be averted. The speedy trial, early hearing and quick disposal are *sine qua non* of criminal jurisprudence. The overcrowded Court-dockets, the heavy volume of work and the resultant pressure on the prosecution and the Police, indubitably keeps the entire criminal jurisprudential mechanism under stress and strain. However, this cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not serve any credit to the criminal justice system, rather it makes for a sad state of affairs. The guarantee of a speedy trial is intended to avoid oppression and prevent delay by imposing on the Court and the prosecution an obligation to proceed with the trial with a reasonable dispatch. The guarantee serves a threefold purpose. Firstly, it protects the accused against oppressive pre-trial imprisonment; secondly, it relieves the accused of the anxiety and public suspicion due to unresolved criminal charges and lastly, it protects against the risk that evidence will be lost or memories dimmed by the passage of time, thus, impairing the ability of the accused to defend himself. It goes without saying that the consequences of pre-trial detention

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are grave. Accused, presumed innocent, till proven otherwise, are subjected to psychological and physical deprivations of jail-life, usually under onerous conditions. Equally important, the burden of detention of such an accused frequently falls heavily on the innocent members of his family.

There is yet another aspect of the matter which deserves consideration at this stage. The allegations in the present case relate to accused being involved in an FIR relating to commercial quantity of contraband under the NDPS Act, 1985. While considering a bail petition in a case involving commercial quantity, the Court has to keep in mind the rigours enumerated under Section 37 of NDPS Act, 1985 which mandates that Courts can grant bail to an accused only after hearing the public prosecutor and after having satisfied itself of twin conditions which are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. The stringent rigours of Section 37 of the NDPS Act, 1985 must be meticulously scrutinized against the backdrop of accused's fundamental right to a speedy trial. The right to life and personal liberty cannot be rendered nugatory by unwarranted delays in the judicial process, particularly where such delay(s) is neither attributable to the accused nor justified at the end of the prosecution by cogent reasons. An individual cannot be kept behind bars for an inordinate period of time by taking refuge in rigours laid down in Section 37 of the NDPS Act, 1985. The legislature in its wisdom, in order to ensure speedy and timely disposal of the cases under the Act, has provided for the constitution of special Courts under Section 36-A of the Act. However, this Court cannot turn *Nelson's eye* to the protracted delays

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and systematic inefficiency that frustrate this legislative purpose. A Court of law is duty-bound to ensure that it does not become complicit in violation of an individual's fundamental rights, notwithstanding anything contained in a statute. While dealing with bail petition in a case governed by the rigours of Section 37 of the NDPS Act, 1985, the Court must strike a judicious balance between the legislative intent to curb the menace of drugs and the sacrosanct right of the accused to a fair and expeditious trial. Prolonged incarceration, without justifiable cause, risks transforming pre-trial detention into punitive imprisonment, an outcome antithetical to the principle of justice and equity.

Ergo, the unequivocal inference is that where the trial has failed to conclude within a reasonable time, resulting in prolonged incarceration, it militates against the precious fundamental rights of life and liberty granted under the law and, as such, conditional liberty overriding the statutory embargo created under Section 37 of the NDPS Act, 1985 ought to be considered as per facts of a given case. In other words, grant of bail in a case pertaining to commercial quantity, on the ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985.

8. Reverting to the facts of the case in hand; as per the custody certificate dated 08.01.2025 filed by the learned State counsel in Court today, the petitioner has suffered incarceration for more than 02 years and 08 months. A perusal of the zimni orders dated 27.02.2023, 10.04.2023, 05.02.2024, 02.08.2024, 03.09.2024, 16.10.2024, 19.11.2024 & 27.11.2024 indicates that the trial is procrastinating, conclusion thereof is not visible in near future and the delay in culmination thereof cannot be attributed to the petitioner. In fact, a perusal of the zimni orders passed by the trial Court

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indicate that repeatedly summons as also bailable warrants have been issued against the Police officials who have not turned up to have their testimonies recorded as prosecution witnesses. The long inordinate custody of the petitioner as an undertrial, without him being responsible for procrastination of the trial, entitles him to grant of regular bail in the factual matrix of the case in hand.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

9. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any, with the trial Court.
- (vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqha Magistrate.
- (vii) The petitioner shall not in any manner try to delay the trial.



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10. In case of breach of any of the aforesaid conditions and those which may be imposed by the concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State shall be at liberty to move cancellation of bail of the petitioner.

11. Ordered accordingly.

12. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 10, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No