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

1. CRM-M-6840-2021 (O&M)
Date of decision : 12.09.2022

Raju Singh @ Raju

...Petitioner

Versus

State of Punjab

...Respondent

2. CRM-M-5841-2021 (O&M)
Date of decision : 12.09.2022

Nirmal Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

3. CRM-M-52446-2021 (O&M)
Date of decision : 12.09.2022

Punjab Singh

...Petitioner

Versus

State of Punjab

...Respondent

4. CRM-M-11807-2021 (O&M)
Date of decision : 12.09.2022

Gurmeet Singh @ Gola

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. P.S. Hundal, Sr. Advocate with
Mr. Vikramjeet Singh, Advocate for the petitioner
(In CRM-M-6840-2021)

Mr. Ashish Aggarwal, Advocate for the petitioners
(In CRM-M-5841-2021 and CRM-M-11807-2021)

Mr. Neeraj Januha, Advocate for the petitioner
(In CRM-M-52446-2021)

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

By this common order, four petitions bearing No.CRM-M-6840-2021, CRM-M-5841-2021, CRM-M-11807-2021 and CRM-M-52446-2021 shall stand disposed of.

First petition i.e. CRM-M-6840-2021 has been filed by Raju Singh @ Raju, second petition i.e. CRM-M-5841-2021 has been filed by Nirmal Singh and Nachattar Singh, third petition i.e. CRM-M-52446-2021 has been filed by Punjab Singh and fourth petition i.e. CRM-M-11807-2021 has been filed by Gurmeet Singh @ Gola, for grant of regular bail to them in FIR No.132 dated 22.08.2020 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) at Police Station Khalra, District Tarn Taran.

Learned Senior Counsel for the petitioner-Raju Singh @ Raju as well as learned counsels for the petitioners in all the cases have jointly

submitted that the petitioners-Raju Singh @ Raju, Nirmal Singh, Nachattar Singh and Punjab Singh are in custody since 22.08.2020 (2 years and 20 days) and investigation is complete and challan has been presented and there are 28 witnesses, out of which, none have been examined as yet and thus, conclusion of trial is likely to take time. It is further submitted that the above petitioners are not involved in any other case. With respect to Gurmeet Singh @ Gola, it is submitted that he is in custody since 16.09.2020 (1 year, 11 months and 27 days) and no recovery has been effected from him and he has been implicated on the basis of disclosure statement of co-accused but no further incriminating evidence has surfaced against him other than the disclosure statement of the co-accused. It is contended that further incarceration of the petitioners would be violative of the right of the petitioners enshrined under Article 21 of the Constitution of India.

Learned counsels for the petitioners have relied upon an **order dated 12.01.2022** passed by the Division Bench of this Court in **CRM-3773-2019 in CRA-D-198-DB-2017** titled as **Bhupender Singh Vs. Narcotic Control Bureau**, order dated 22.08.2022 passed by the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) No.5530-2022** titled as **"Mohammad Salman Hanif Shaikh Vs. The State of Gujarat**, order dated 07.02.2020 passed by the Hon'ble Supreme Court in **Criminal Appeal No.245/2020 titled as "Chitta Biswas Alias Subhas Vs. The State of West Bengal"**, order dated 05.08.2022 passed by the Hon'ble Supreme Court in **Criminal Appeal No.1169 of 2022 titled as "Gopal Krishna Patra @ Gopalrusma Vs. Union of India,"**, order dated 01.08.2022 passed by the

Hon'ble Supreme Court in *Special Leave to Appeal (Crl.) No.5769/2022 titled as "Nitish Adhikary @ Bapan Vs. The State of West Bengal"*, in support of their arguments that on the basis of long custody alone, the petitioners deserve the concession of regular bail.

Learned Senior counsel for the petitioner as well as other counsels appearing on behalf of the petitioners in all the cases have jointly submitted that in the present case, in addition to the above-stated factors, there were 16 samples which were sent after being taken from all the four accused-petitioners and as a result of which, result of 14 samples has come but the result of the other two samples from FSL has not come till date. It is further submitted that even the residue was also sent to FSL for examination and result of the same has also not come as yet.

On the other hand, learned State Counsel, on instructions from ASI Satnam Singh, has opposed the present petition for grant of regular bail to the petitioners and has submitted that from the petitioner-Raju Singh @ Raju, recovery of 300 grams of heroin has been effected, from the petitioner-Nirmal Singh, recovery of 270 grams of heroin was effected, from petitioner-Nachattar Singh, recovery of 280 grams of heroin was effected, and from petitioner-Punjab Singh, recovery of 270 grams of heroin was effected and has thus, submitted that the recovery from each of the petitioner is of commercial quantity and thus, bar under Section 37 of the Act of 1985 would apply in the present case. It is further submitted that the petitioner-Gurmeet Singh @ Gola is involved in four other cases, out of which, two cases are under the Act of 1985 and the fact that the other petitioners are not involved in any other cases, however, is not being

disputed by him.

Learned counsel appearing on behalf of petitioner-Gurmeet Singh @ Gola has, in rebuttal to the abovesaid arguments, has submitted that out of two cases under the Act of 1985, the petitioner-Gurmeet Singh @ Gola has been acquitted in one case and other case is of the year 2013 and the petitioner is on bail in the said case and has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard the learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court in ***Mohammad Salman Hanif Shaikh's*** case (Supra), had held as under:-

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of

the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

The above-said case was also a case under the Act of 1985 and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Hon'ble Supreme Court had observed that the concession of bail was granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

Hon'ble Supreme Court in ***Chitta Biswas Alias Subhas's*** case (Supra) was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is 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. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."

In **Gopal Krishna Patra @ Gopalrusma's** case (Supra), the Hon'ble Supreme Court was pleased to observe as under: -

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior

Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.

We therefore, direct that:

(a) The appellant shall be produced before the Trial Court within five days from today.

(b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.

(c) The appellant shall not in any manner misuse his liberty.

(d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

A perusal of the above-said order would show that in the said case also the custody was of approximately 2 years, 1 month and 17 days and the case was under the Act of 1985 and primarily, considering the longevity of the custody period, concession of bail was granted to the petitioner (therein).

The Hon'ble Supreme Court of India in **Nitish Adhikary @ Bapan's** case (Supra) has observed 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 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 any 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.

The Special Leave Petition is disposed of on the aforestated terms.

Pending application(s), if any, shall stand disposed of."

A perusal of the said order would also show that the said case was under the Act of 1985 and the provision of Section 37 of the Act of 1985 were also mentioned in the same and the bail was granted primarily by considering the petitioner (therein) had undergone custody for a period of 01 year and 07 months and only one witness had been examined and that the petitioner (therein) did not have any criminal antecedents.

The Division Bench of this Court in **Bhupender Singh's** case (Supra), had also held that in case, the accused person is able to make out a case within the parameters of Article 21 of the Constitution of India, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the Act of 1985.

In the present case, the petitioners-Raju Singh @ Raju, Nirmal

Singh, Nachattar Singh and Punjab Singh are in custody since 22.08.2020 (2 years and 20 days) and investigation is complete and challan has been presented and there are 28 witnesses, out of which, none have been examined as yet and thus, conclusion of trial is likely to take time. The above petitioners are stated to be not involved in any other case. The petitioner-Gurmeet Singh @ Gola is in custody since 16.09.2020 (1 year, 11 months and 27 days) and no recovery has been effected from him and thus, further incarceration of the petitioners would be violative of the right of the petitioners enshrined under Article 21 of the Constitution of India.

Keeping in view the above-said facts and circumstances as well as the law laid down in the abovesaid judgments as well as in the above-said orders passed by the Hon'ble Supreme Court which have been reproduced hereinabove, all the petitions are allowed and the petitioners are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to them not being required in any other case. The petitioners shall also abide by the following conditions:-

1. The petitioners will not tamper with the evidence during the trial.
2. The petitioners will not pressurize/intimidate the prosecution witness(s).
3. The petitioners will appear before the trial Court on the date fixed, unless their personal presence is exempted.
4. The petitioners shall not commit an offence similar to the offence of which they are accused of, or for commission of

which they are suspected.

5. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

12.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**