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

CRM-M-19648-2021 (O&M)

Date of decision : 29.08.2022

Gaurav Gandhi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ramandeep Singh Gill, Advocate and
Mr. Harmanjeet Singh, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

CRM-31386-2022

This is an application filed for grant of leave under Rule 3/A(1) of Chapter VI, Part B, Volume V of Punjab and Haryana High Court Rules and Orders to file the present application.

In view of averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present application.

Main case

1. This is a second bail application under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.41 dated 21.03.2019 registered under Sections 21/61/29/85 of the Narcotic Drugs and Psychotropic Substances Act, (Section 201 of the Indian Penal Code, 1860 has been added later on) at Police Station Lalru, District Sahibzada Ajit Singh

Nagar.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 21.03.2019 (3 years, 5 months and 8 days) and there are 15 prosecution witnesses, out of which, none have been examined and thus, the conclusion of trial is likely to take time. It is further submitted that earlier bail application of the petitioner was dismissed on 30.06.2020 and even thereafter, a period of 2 years, 1 month and 29 days has elapsed and yet, no witnesses have been examined.

3. Learned counsel for the petitioner has referred to zimni orders in order to show that after 30.06.2020, 14 dates were given on account of COVID-19 pandemic and thereafter, on 25.01.2021,ailable warrants of arrest were issued against the prosecution witnesses and in spite of the fact thatailable warrants have been issued on six occasion, no prosecution witnesses have been examined.

4. Learned counsel for the petitioner has 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 his arguments that on the basis of long custody alone, the petitioner deserves the concession of regular bail.

5. Learned counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court passed in case titled as *Parvinder Singh Vs. State of Punjab*, reported as 2003(12) SCC 615, in support of his argument with regard to maintainability of the second regular bail application after the dismissal of the first. He has further relied upon the judgment passed by the Rajasthan High Court (Jaipur Bench) (Full Bench) in case titled as *Ganesh Raj Vs. State of Rajasthan and others* reported as 2005(3) RCR (Criminal) 30, to contend that the speedy trial is a constitutional right of the accused provided to him under Article 21 of the Constitution of India and in case, the first regular bail application is dismissed on merits and trial is being delayed then, the petitioner would have the right to file a second bail application on account of delayed trial.

6. Learned State Counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that recovery, in the present case is of commercial quantity and thus, bar under Section 37 of NDPS Act would apply. It is further submitted that the petitioner is involved in two other cases, although, the said cases do not pertain to the NDPS Act.

7. Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is on bail in both the cases 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.”

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

9. 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."

10. The above-said case was also a case under the NDPS Act, 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.

11. 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 phensydril 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."*

12. 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."

13. 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 NDPS Act and primarily, considering the length of the custody period, concession of bail was granted to the petitioner (therein).

14. 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."

15. 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 NDPS Act, 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.

16. 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 in view of the length of the period of custody, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act, 1985.

17. In the present case, the petitioner is in custody since 21.03.2019 (3 years, 5 months and 8 days) and there are 15 prosecution witnesses, out of which, none have been examined and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case under the NDPS Act and further incarceration of the petitioner would be violative of the right of the petitioner enshrined under Article 21 of the Constitution of India.

18. The petitioner had earlier also filed a petition under Section 439 of Cr.P.C. for regular bail which was dismissed by a Coordinate Bench of this Court vide order dated 30.06.2020 (Annexure P-3). Subsequent to the same, a period of 2 years, 1 month and 29 days has elapsed and no prosecution witness has been examined and trial is still at the same stage as it was when

the abovesaid order dated 30.06.2022 was passed. A perusal of the zimni orders which have been annexed by the petitioner alongwith the petition, would show that after 30.06.2022, on 14 dates, the case has been adjourned on account of COVID-19 pandemic. Thereafter, on 25.01.2021, the Judge Special Court, SAS Nagar, Mohali was pleased to pass the following order:-

“State Vs Gaurav Gandhi NDPS 169-2019

Present: Sh. Satnam Singh Addl. PP for the State.

Accused Jagroshan Singh on bail in person.

Accused Gaurav Gandhi in custody (not produced)

Today this case was fixed for awaiting production warrant of accused Gaurav Gandhi. Accused Gaurav Gandhi not produced by the Jail authorities. Let explanation of the concerned Jail Superintendent be called for the date fixed that why accused has not been produced by the Jail authorities in spite of giving direction to produce the accused in the Court. Let fresh production warrants of the accused Gaurav Gandhi be again issued to Central Jail, Patiala for 17.02.2021 and he be produced through VC.

No PW is present or served. Let PW LC Gurjeet Kaur, Simranjit Singh DSP, SI Narpinder Singh, SI Rajinder Singh and C Rajesh Kumar along with witnesses mentioned at S.No.5, 6, 9, 10 and 14 now be summoned throughailable warrants of arrest in the sum of Rs.5000/- with one surety in like amount each through the office of SSP concerned as well as District Attorney, SAS Nagar, Mohali for 17.02.2021. Notice to counsel for accused be also issued for his personal appearance through video conferencing or physically on the date fixed in order to know about his consent to proceed with this case or not.

Date of order: 25.01.2021

Sd/-(Avtar Singh Barda)

*Judge Special Court
SAS Nagar, Mohali
UID No.PB 0159”*

19. A perusal of the above order would show that no prosecution witness was present and thus, the witnesses at Sr. Nos.5, 6, 9, 10 and 14 were sought to be summoned through bailable warrants. Thereafter, in spite of the fact that on 6 occasions, bailable warrants were issued, none of the witnesses were either present or examined. The zimni order dated 19.05.2022 is reproduced hereinbelow:-

*“Present: Sh. Ravinder Singh, Ld. Addl. PP for the State.
Accused Gaurav Gandhi in custody(not
produced)
Accused Jagroshan Singh on bail in this case
but custody in some other case(not produced)
Accused Gaurav Gandhi and Jagroshan Singh have not
been produced by jail-authorities. Production warrants of the
said accused be again issued for 15.06.2022. They be
produced on the date fixed on roohnamahi.
No PW is present. Summons issued to PW SI Narpinder
Pal Singh received back duly served but he has not come
present. He be summoned through bailable warrants in the
sum of Rs. 5,000/- with one surety in the like amount for
14.07.2022. Remaining PWs be also summoned for the date
fixed.
Date of Order: 19.05.2022*

*Sd/-(Sandeep Kumar Singla)
JSC/SAS Nagar
UID NO . PB00118”*

20. The Hon'ble Supreme Court in **Parvinder Singh's case** (Supra) has held as under:-

“2. In Criminal Appeal No.57-DB of 2001 an application for grant of bail was filed by the appellant being Criminal Miscellaneous No. 53713 of 2002. The bail application has not been examined on merits and has been dismissed holding that it is not maintainable, as against an earlier order of the High Court rejecting bail, a special leave petition was filed before this Court which was dismissed as withdrawn. The second ground stated in the impugned order is that the bail application has been rejected on three earlier occasions. The fact that earlier bail application was rejected and the special leave petition was dismissed as withdrawn would not make the fresh bail application legally not maintainable. The High Court can always consider fresh circumstances and subsequent events. The same would be the position regarding the earlier rejections. In this view, we are unable to sustain the impugned order dated 7th January, 2003. The bail application (Criminal Miscellaneous No. 53713 of 2002) shall be decided afresh on merits. We request the High Court to decide the application before the close of the court for winter vacation.

3. The appeal is disposed of accordingly.”

21. A perusal of the above judgment would show that it was observed by the Hon'ble Supreme Court that even in case, the earlier bail application of the accused was rejected and the SLP against the same was dismissed as withdrawn, the same would not make the fresh bail application legally not maintainable and the Hon'ble Court can consider the subsequent bail application after taking into account fresh circumstances and subsequent events.

22. Hon'ble Full Bench of Rajasthan High Court in **Ganesh Raj's case** (Supra) has held as under:-

“Speedy trial is a Constitutional right of the accused provided to him by [Article 21](#) of the Constitution. If first

application of the accused who is in custody is dismissed on merits and the trial is delayed, the accused has a right to make second bail application on the ground of delayed trial Section 439 relates to Constitutional right of the accused whereas Section 438 to his statutory right. The provisions of Section 438 should not be put to abuse at the instance of unscrupulous accused.”

23. A perusal of above judgment would show that it has been observed that speedy trial is a constitutional right of the accused provided to him under Article 21 of the Constitution of India and in case, the accused is in custody and his first bail application was dismissed on merits and the trial is being delayed, then, the accused has a right to file a second bail application on the ground of delayed trial. It was further observed that Section 439 relates to the constitutional right of the accused.

24. This Court is of the view that the observations made by the Hon'ble Supreme Court and the Hon'ble Full Bench of Rajasthan High Court would fully apply to the facts of the present case as, in spite of lapse of 3 years, 5 months and 8 days and of 2 years, 1 month and 29 days after passing of the order dated 30.06.2020, no prosecution witness has been examined and thus, on the said ground, the present second regular bail petition is maintainable.

25. Keeping in view the above-said facts and circumstances as well as the law laid down in the above-said judgments passed by the Hon'ble Supreme Court and by the Hon'ble Full Bench of Rajasthan High Court in ***Ganesh Raj's case*** (Supra), which have been reproduced hereinabove, the present petition is allowed and the 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 and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize / intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
5. The petitioner 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 him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

26. 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.

27. 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.

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

29.08.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No