

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

212

CRM-M-54177-2022

Date of decision : 29.11.2022

Lovepreet Singh @ Labhu

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.241 dated 29.10.2018 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Sadar Khanna (Police District Khanna), District Ludhiana.

Brief facts of the case are that on 29.10.2018, when the police party headed by ASI Jaswinder Singh doing patrolling duty in the area of Village Mohanpur, they saw the petitioner coming on foot in service lane from Libra side holding one heavy plastic polythene in his left hand and on seeing the police party, the petitioner tried to run away. The police apprehended the petitioner and on search 35 injections (2 mls. each) of Lipgesic containing Buprenorphine Hydrochloride salt were recovered from him.

Learned Counsel for the petitioner has argued that the

petitioner has been falsely implicated in the case. The petitioner an under trial having already The whole case of the prosecution is based on the testimonies of the official witnesses and no independent witness was joined at the time of alleged recovery. The petitioner is in custody since 29.10.2018. Out of 13 prosecution witnesses only 01 has been examined so far and 01 has been given up. Most of the prosecution witnesses are yet to be examined and the trial is moving at snail's pace which is not likely to be concluded in near future. No useful purpose will be served by further detention of the petitioner in custody. Keeping in view the pace of trial and the fact that the petitioner already having undergone actual custody of 04 years and 28 days, he will be entitled for grant of regular bail. He further submits that Section 37 of the NDPS Act has to be read as subservient to the fundamental right of the petitioner to speedy trial under Article 21 of the Constitution of India. In support of his arguments, learned counsel for the petitioner has placed reliance upon the orders of Hon'ble Supreme Court passed in ***Criminal Appeal No.1570/2021 titled as 'Mahmood Kurdeya Vs. Narcotics Control Bureau' decided on 07.12.2021, Special Leave to Appeal (Crl.) No.5769/2022 titled as 'Nitish Adhikary @ Bapan Vs. State of West Bengal' decided on 01.08.2022, Criminal Appeal No.245/2020 titled as 'Chitta Biswas @ Subhas Vs. The State of West Bengal' decided on 07.02.2020*** and orders of Co-ordinate Bench of this Court passed in ***CRM-M-19040-2022 (O&M) titled as 'Babu Ram Vs. State of Punjab' decided on 15.09.2022*** and ***CRM-M-18805-2022 (O&M) titled as 'Satnam Singh Vs. State of Punjab' decided on 02.09.2022.***

On the other land, learned State Counsel has opposed the

present petition on the ground that petitioner was found in a conscious possession of 35 injections of Lipgesic containing Buprenorphine Hydrochloride salt without any licence and permit and the alleged contraband recovered from the petitioner falls under the category of commercial quantity. Therefore, the petitioner does not deserve the concession of regular bail.

Custody certificate dated 26.11.2022 has been filed by learned State counsel in the Court today which is taken on record. As per the custody certificate, the petitioner is in custody from last more than 04 years.

Having heard learned counsel for the parties, I found that the petitioner has already suffered prolonged incarceration of about 4 years and 28 days. In the trial, only 01 witness has been examined out of 13 cited witnesses.

In the case of ***Shariful Islam @ Sarif Vs. The State of West Bengal, Special Leave to Appeal (Crl.) No.4173 of 2022 decided on 04.08.2022*** Hon'ble Apex Court found that an under trial having suffered incarceration over 1 year and 6 months is entitled for grant of regular bail holding that :-

"2. Taking into consideration the fact that the petitioner is reported to be in custody since 27-1-2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him."

Similarly, Hon'ble Supreme Court in ***Gopal Krishna Patra***

@ Gopalrusma Vs. Union of India, Criminal Appeal No.1169 of 2022

decided on 05.08.2022 ordered as under:-

"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."

The Hon'ble Supreme Court in **Chitta Biswas @ Subhas'**

Vs. The State of West Bengal, Criminal Appeal No(s).245 of 2020

decided on 07.02.2020 ordered as under :-

"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."

The Hon'ble Supreme Court in another judgment passed in

Mohammad Salman Hanif Vs. The State of Gujrat, Special Leave to

Appeal (Crl.) No(s).5530 of 2022 decided on 22.08.2022 ordered as under :-

"The petitioner seeks enlargement on regular bail in the FIR being C.R.No.NDPS/11192015200884/2020 case registered at Changodar Police Station, District Ahmedabad (Rural) for the offences punishable under Sections 8(c), 21(c) and 29 of the NDPS Act.

We have heard learned counsels for the parties and are of the considered opinion that the questions like whether the contraband recovered from the petitioner is of 'commercial quantity or whether codein phosphate is a manufactured drug or a narcotic substance, need not be go into at this stage.

As per the allegations, 358 bottles of cough syrup containing codein of 'commercial quantity' was recovered from the petitioner.

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."

Division Bench of this Court in ***Bhupender Singh Vs. Narcotic Control Bureau : (2022) 2 RCR (Criminal) 706*** after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors enumerated under Section 37 of the Act held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India de hors the stringent provisions of Section 37 of the Act.

The same principle has been followed by the Supreme Court in the afore-referred cases and in the cases relied upon by learned counsel for the petitioner granting concession of regular bail to the

undertrials merely on the basis of long incarceration that they have suffered owing to delay in trial.

Keeping in view the facts and circumstances of the present case, the present petition seeking regular bail is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned. However, in addition to the same the petitioner shall abide 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 similar to the one alleged in the present case.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall join the investigation as and when called upon to do so before the authorities.*
- (viii) *The petitioner shall not in any manner try to delay the trial.*

In case of any breach of the conditions as enumerated hereinabove and those which may be imposed by the trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

Ordered accordingly.

29.11.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No