

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-14.12.2022

CRM-M-57386-2022

Balraj Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Arshdeep Singh Brar, Advocate for the Petitioner.

Ms. Ramta Chowdhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.92 dated 21.06.2021 under Section 22 of NDPS Act, 1985 registered at Police Station City Moga, District Moga.

The brief facts of the case are that while the police party was patrolling and reached near the bypass of the bridge a special informer informed that Balraj Singh (petitioner) son of Kewal Singh was habitual of consuming and selling drugs and cases stood registered against him. If a *nakabandi* was arranged at Baghipura side then he could be apprehended with intoxicating tablets. Pursuant thereto the aforementioned FIR came to be registered and the petitioner was arrested and from his possession 290 Etizol-0.5 tablets were recovered.

The Counsel for the petitioner contends that it was highly improbable that the petitioner would smuggle the contraband in a

transparent polythene bag. Further he could not be said to be in conscious possession as he is stated to have thrown the bag on being confronted by the police. Reference is made to various orders of this Court wherein the bail has been granted considering these two aspects of the drugs being carried in a polythene bag as also the lack of conscious possession where the bag is stated to have been thrown on the ground. He contends that the petitioner is in custody since 21.06.2021. Only 02 prosecution witnesses out of 12 cited prosecution witnesses were examined on 01.04.2022. Thereafter multiple warrants of arrest were issued against witnesses SI Lakhwinder Singh and ASI Surjit Singh as per orders Mark-A to Mark-H. He further contends that the Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Arising out of Judgment and Order dated 04.05.2022 in CRM(NDPS) No.442/2022 Decided on 01.08.2022*** granted bail to the accused therein after he had undergone a custody period of 01 year and 07 months and only one witness had been examined. He contends that his case is similar to that of ***Nitish Adhikary @ Bapan (supra)***.

The Counsel for the State on the other hand contends that commercial quantity of contraband was recovered from the Petitioner. Therefore, the rigors of Section 37 of the NDPS Act do not entitle him to the grant of bail. He however, does not dispute the fact that the Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan's case (supra)*** had granted bail to the applicant therein where he had undergone 01 year and 07 months of custody.

I have heard learned Counsel for the parties at length.

Admittedly, the petitioner is in custody since 21.06.2021. A

perusal of the zimini orders would show that after two witnesses were examined on 01.04.2022, multiple warrants of arrest have been issued against the witnesses SI Lakhwinder Singh and ASI Surjit Singh. Apparently they are certainly delaying the trial and as many as 10 prosecution witnesses are yet to be examined. The Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Decided on 01.08.2022*** 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 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 2 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.”

The case of the petitioner is similar to that of the accused in the aforementioned case. Therefore, the petitioner can be granted the concession of bail more so when no other case under the NDPS Act stands

registered against the petitioner.

Thus, without commenting on the merits of the case, the present petitions are allowed and petitioner-**Balraj Singh** son of Kewal Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the cases mentioned in this order.

In addition, the petitioner (or any one on their behalf) shall prepare a FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

December 14, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>