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

CRM-M-5597-2023
Date of decision : 10.04.2023

Mary Nyambura

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arjun Veer Sharma, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. A.G. Punjab.

VIKAS BAHL, J. (ORAL)

This is the third petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.27 dated 04.04.2021 registered under Sections 21 and 29 of the NDPS Act, 1985 at Police Station Cantt. Jalandhar, District Jalandhar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 04.04.2021 (2 years and 7 days), investigation is complete and challan has been presented and there are 13 prosecution witnesses, out of which, only two witnesses have been examined till date and thus, the conclusion of trial is likely to take time. It is further submitted that the first bail application of the petitioner was withdrawn on 29.07.2022 at that stage and her second bail application was withdrawn on 05.12.2022 with liberty to file a fresh petition after giving full and better particulars and thus,

in effect, the present petition is the second regular bail filed by the petitioner. It is contended that even after 29.07.2022, the petitioner has undergone a substantial period of custody and that the co-accused of the petitioner namely, Okafor Paul Chukwunweiken, has been granted the concession of regular bail by a Coordinate Bench of this Court vide order dated 16.01.2023 passed in CRM-M-48734-2022. It is also contended that the case of the present petitioner is on a better footing than the case of said co-accused and the alleged recovery effected from the said co-accused is higher than that recovered from the present petitioner. It is also submitted that further incarceration of the petitioner would be violative of the right of the petitioner enshrined under Article 21 of the Constitution of India.

Learned counsel for the petitioner has relied upon an **order dated 12.01.2022** passed by Hon'ble 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 to the effect that on the basis of long custody alone,

the petitioner deserves the concession of regular bail.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the recovery effected in the present case falls within the ambit of commercial quantity and thus, the petitioner does not deserve the concession of regular bail.

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 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.

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 NDPS Act, 1985 and primarily, considering the length 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 NDPS Act, 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.

The Hon'ble 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 custody period, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act, 1985.

In the present case, the petitioner is in custody since 04.04.2021 (2 years and 7 days), investigation is complete and challan has been presented and out of 13 prosecution witnesses, only two witnesses have been examined till date and thus, the conclusion of trial is likely to take time. Co-accused of the petitioner namely, Okafor Paul Chukwunweiken has been granted the concession of regular bail by a Coordinate Bench of this Court vide order dated 16.01.2023 passed in CRM-M-48734-2022 (Annexure P-4) and further incarceration of the petitioner would be violative of the right of the petitioner enshrined under Article 21 of the Constitution of India.

Keeping in view the abovesaid facts and circumstances as well as the law laid down in the abovesaid judgments, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act, 1985.

Accordingly, the present petition is allowed and the petitioner is

ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to her 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 she is an accused, or for commission of which she 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/her 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 an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

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

10.04.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**