

CRM-M-5238-2023

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(216) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5238-2023
Date of Decision: 27.04.2023

SHAMBU MANDAL

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Raj Karan Singh Verka, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.55 dated 14.04.2021 (Annexure P-1) registered under Section 18(b) of the NDPS Act, 1985 at Police Station Shahkot, District Jalandhar.

2. The brief facts of the case are that on 14.04.2021, ASI Salinder Singh along with his fellow police officials were present at Saidpur Road, Near Old Chungi, Tehsil Shahkot in connection with patrolling and checking of suspicious persons. One shorn hair young person came on foot from Shahkot side who was carrying one heavy bag on his shoulder. The said person was stopped with the help of the other police officials on the basis of suspicion that he might be carrying some intoxicating material with him. Therefore, ASI Salinder Singh sent intimation to the MHC Police Station Shahkot over the phone to send some competent officer at the spot. Based on the said information given by ASI Salinder Singh, the MHC of the Police

Station informed SI Balkar Singh. Accordingly, SI Balkar Singh along with his fellow police officials reached at the spot in a Government vehicle.

ASI Salinder Singh handed over the above-said person to SI Balkar Singh along with the bag carried by the said person. SI Balkar Singh inquired about the identity of the above-said persons who disclosed his name as Shambu Mandal (petitioner). The petitioner was apprised of his right to be searched in the presence of a Gazetted Officer or Magistrate. Thereafter, as Shambu Mandal (petitioner) had stated that he wished to be searched in the presence of a Gazetted Officer, DSP Ajay Singh was called to the spot. Pursuant to the compliance of the provisions of the Act, the search of the bag was conducted and it was found to contain 03 kgs 500 grams of opium.

3. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. In fact, no effort was made by the Investigating Agency to join any independent witness at the time of effecting of the alleged recovery. Other mandatory provisions of search and seizure had also been violated. As the petitioner was in custody since 14.04.2021 and only 02 out of the 10 prosecution witnesses had been examined so far, the petitioner was entitled to the grant of bail in view of the judgment of the Hon'ble Supreme Court in case of Nitish Adhikary @ Bapan Versus 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 and followed by this Court in the case of Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022.

4. A reply dated 26.04.2023 by way of an affidavit of Gurpreet Singh, PPS, Superintendent of Police, Sub Division Shahkot, District

Jalandhar (Rural) has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that commercial quantity of contraband was recovered from the petitioner. Therefore, in view of the conditions contained in Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He, however, concedes the fact that the petitioner is in custody since 14.04.2021, is a first-time offender and only 02 out of the 10 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for parties.

6. The Hon'ble Supreme Court in the case of **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 aforesaid terms.

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

This Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022** has followed the dictum laid down by the Hon'ble Supreme Court and granted bail to the petitioner therein after he had undergone total custody of 01 year and 06 months.

7. In the present case, admittedly, the petitioner is a first-time offender. He is stated to be in custody since 14.04.2021 and only 02 out of the 10 prosecution witnesses have been examined so far. As such, the Trial of the present case is not likely to be concluded anytime soon. In such a situation, the rigors of Section 37 of the NDPS Act can be relaxed to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to a speedy trial and the petitioner can be granted the concession of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Shambu Mandal son of Krishan Mandal is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. 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 each time that he is not involved in any other crime other than the present case.

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10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

27.04.2023

JITESH

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