

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

CRM-M-6608-2023

Date of decision : 13.07.2023

AJAY @ BABBAL

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Puneet K. Bansal, Advocate for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.67 dated 7th of June, 2020 registered for the offences punishable under Sections 21, 25 of Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, 'the NDPS Act') (later on Section 25 of the NDPS Act deleted and Section 29 of the NDPS Act added) at Police Station Special Task Force, District S.A.S Nagar (Mohali).

2. Counsel for the petitioner relies upon the order dated 14.09.2022 passed by this Court in CRM-M No.41230 of 2022 whereby co-accused Vinod Kumar @ Gabbar has been granted concession of regular bail keeping into consideration the right of the accused to speedy trial as granted under Article 21 of the Constitution of India and the fact that incarceration was already more than 2 years and 3 months. Counsel for the petitioner submits that so far as the present petitioner is concerned, his custody is more than 3 years and 29 days and the trial is still at nascent stage. Despite most of the cited witnesses being officials only few could be

examined.

3. State Counsel does not dispute the factual assertions based on record.

4. I have heard counsel for the parties and have gone through records of the case.

5. While granting the concession of regular bail to the co-accused namely Vinod Kumar @ Gabbar in CRM-M No.41230 of 2022, this Court observed as under :

“This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.67 dated 7th June, 2020 registered for the offences punishable under Sections 21, 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') (Section 25 of NDPS Act deleted later on Section 29 of NDPS Act, added later on) at Police Station Special Task Force, District SAS Nagar (Mohali).

2. As per the case of the prosecution on receiving secret information, raid was conducted. From the personal search of the petitioner 300 grams of *heroin* was recovered. Further recovery of 700 grams of *heroin* was made from person of Ajay Kumar-the co-accused.

3. Custody Certificate of the petitioner has been filed on behalf of the State today in Court, which is taken on record. As per the same, the petitioner has undergone actual custody of 2 years, 3 months and 2 days. Challan stands presented. There is no other case against the petitioner. Ld. State Counsel on instructions submits that there are 19 cited witnesses and none has been examined as yet.

4. Ld. Counsel for the petitioner submits that the petitioner has undergone custody of more than 2 years and 3 months. He has a right to speedy trial guaranteed under Article 21 of the Constitution

of India. The same is also one of the rights of the accused recognized under Section 36 of the NDPS Act. He submits that keeping in view the incarceration suffered by the petitioner he is entitled to regular bail. It is false case foisted upon the petitioner, who has no criminal antecedents. He further asserts violation of mandatory provisions of Section 42 and Section 50 of the NDPS Act. It has been submitted that Section 37 of the NDPS Act has to be read as subservient to the Fundamental Right of the petitioner guaranteed under Article 21 of the Constitution of India.

5. Further reliance has been placed upon order passed by this Court in **CRM-M No.18805 of 2022** titled as **Satnam Singh vs. State of Punjab**, decided on 2nd of September, 2022, whereby the petitioner, who was in custody for more than 2 years, 2 months and 29 days was held entitled to bail. He refers to various orders passed by the Supreme Court in **Shariful Islam @ Sarif vs. The State of West Bengal passed in Special Leave to Appeal (Crl.) No.4173 of 2022** decided on 4th of August, 2022, **Gopal Krishna Patra @ Gopalrusma Vs. Union of India** passed in **Criminal Appeal No.1169 of 2022** decided on 5th of August, 2022, **Chitta Biswas @ Subhas vs. The State of West Bengal** passed in **Criminal Appeal No(s).245/2020** decided on 7th of February, 2020 and **Mohammad Salman Hanif vs. The State of Gujrat, Special Leave to Appeal (Crl.) No(s).5530/2022** decided on 22nd of August, 2022 wherein undertrials have been granted relief of regular bail on the basis of custody dehors Section 37 of the NDPS Act. He also relies upon judgment of the Supreme Court in **Sujit Tiwari vs. State of Gujarat and another, reported as (2020) 13 SCC 447** wherein Apex Court found that a person in custody for more than 2 years was entitled to bail.

6. Having heard Ld. Counsel for the parties, I found that the petitioner has already suffered prolonged incarceration of more than 2 years and 3 months. There is no other case against the petitioner. In the trial, no witness has been examined out of 19 cited witnesses. Thus, trial is not expected to conclude in near future.

7. In the case of **Shariful Islam @ Sarif' case (supra)**, 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.”

8. Similarly, the Supreme Court in **Gopal Krishna Patra @ Gopalrusma's case (supra)** 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, 19851.

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.”

9. The Supreme Court in **Chitta Biswas @ Subhas's case (supra)** 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.”

10. The Supreme Court in another judgment passed in **Mohammad Salman Hanif's case (supra)** ordered as under :-

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

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

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.

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.”

11. 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.

12. Right to speedy trial is one of the objectives of NDPS Act and is rather one of the checks and balances provided under the Act. Section 36 of the NDPS Act recognizes the need for speedy trial. The constitution of Special Courts is means to achieve the said objective of speedy trial. It is only with an objective to synthesize the right to speedy trial and rigors of Section 37 that the Supreme Court in the afore-referred cases granted concession of regular bail to the under-trials merely on the basis of long incarceration that they have suffered owing to delay in trial.

13. Keeping in view the aforesaid facts and circumstances of the present case, the instant petition deserves to be allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the

petitioner shall remain bound 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 not in any manner try to delay the trial.

14. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

15. Ordered accordingly.”

6. In view of above, without commenting on the merits of the case and taking into consideration the submissions made by counsel for the petitioner coupled with the fact that the case of the present petitioner is not distinguishable from that of his co-accused, on the principle of parity petitioner is held entitled to the same relief. The present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall

remain bound 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 cellphone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

7. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

8. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 13, 2023
Dpr

(Pankaj Jain)
Judge

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