

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

CRM-M-8119-2021 (O&M)
Date of decision : 24.07.2023

GAGANDEEP SINGH @ GAGAN

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Naveen Bawa, Advocate
for the petitioner.

Mr. M.S. Tiwana, A.A.G., Punjab.

HARSH BUNGER, J.

Prayer in the present petition, filed under Section 439 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), is for grant of regular bail to the petitioner in case FIR No.155 dated 30.11.2020, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Dehlon, District Ludhiana.

2. Reply by way of an affidavit of Sh. Deep Kamal, PPS, ACP (South), Ludhiana, on behalf of respondent-State of Punjab, has been filed, which is already on record.

3. Custody certificate dated 29.05.2023 of the petitioner filed by learned State counsel, in the Court, is taken on record, subject to all just exceptions.

4. Briefly, the above-said case FIR was registered on the basis of *ruqa* prepared by ASI Baljit Singh; wherein, it was stated that on 30.11.2020, he along with Constable/s Sandeep Singh and Evandeep Singh,

was going to Village Gurm from Village Shankar on private vehicle for patrolling and in search of suspected persons and when the police party reached approximately ½ kilometer outside the Village Shankar, then one young man was seen coming by holding one heavy polythene bag in his right hand; who after seeing the police party got perplexed and immediately tried to run towards the left hand side fields, after throwing the black colour polythene bag, held in his hand. The afore-stated person is stated to have been apprehended by the complainant with the help of fellow officials and upon inquiry, he disclosed his name as Gagandeep Singh @ Gagan (petitioner) son of Avtar Singh. It is stated that upon checking the polythene which was thrown by the afore-said Gagandeep Singh @ Gagan, the intoxicant tablets were recovered from the same and no license or permit was shown by him, for keeping the same in his possession. Accordingly, the *ruqa* was prepared and sent to the police station for registration of the FIR.

5. As per the reply filed on behalf of the State of Punjab, one Sub Inspector namely, Balkar Singh, reached at the spot as an Investigating Officer and after introducing himself to the apprehended person i.e. Gagandeep Singh @ Gagan (petitioner) and making him aware of his legal rights of search etc., he (Gagandeep Singh @ Gagan) reposed confidence in the Investigating Officer and told him that he can conduct the search of his envelop. Accordingly, after following the procedure, the search of the envelope was conducted and 800 intoxicant tablets of NRX Tramadol Hydrochloride in 80 strips were recovered. Accordingly, the petitioner was arrested in the case. Thereafter, the petitioner along with the recovered case property, were produced before the Judicial Magistrate Ist Class, Ludhiana; where two sample parcels were taken out and sent for examination. The

Regional Testing Forensic Science Laboratory, Ludhiana issued a report dated 07.01.2021; wherein it was mentioned that “Salt Tramadol Hydrochloride” was detected in the sample parcel and the average weight of one table was found as 335 mg., hence, the contraband recovered falls within the ambit of “commercial quantity.”

6. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present FIR by foisting the recovery upon him whereas, he has not committed any offence as alleged in the FIR and nothing was recovered from him. It is submitted that in fact on 30.11.2020, the petitioner was picked up by the police officials from barber shop, which is at the distance of about six kilometers from the alleged place of occurrence. It is submitted that the petitioner is being implicated in a totally false and a planted case. Learned counsel for the petitioner submits that there has been total non-compliance of the mandatory provisions of the NDPS Act. It is submitted that the petitioner has been in custody since 30.11.2020 and the investigation in this case qua him is complete.

Learned counsel for the petitioner has placed on record copies of the *zimini* orders passed by the learned trial Court in the instant case and by referring to the said *zimini* orders, it is contended that the challan was presented way back on 25.01.2021; charges have been framed on 11.04.2022; no prosecution witness has been examined upto 27.02.2023 and trial is likely to take some time; accordingly no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. It is also submitted that the petitioner is not involved in any other case under the NDPS Act. However, the regular bail applied by the petitioner before the learned Judge, Special Court, Ludhiana, was dismissed vide order dated

19.01.2020. It is stated that the petitioner is ready and willing to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly, prayer for grant of regular bail is made.

7. Per contra, learned State counsel has opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of offence by submitting that the intoxicating tablets recovered in this case were containing the “Salt Tramadol Hydrochloride” and the average weight of one tablet was found as 335 mg. Accordingly, the total recovery effected in this case falls under the category of “commercial quantity”, hence bar under Section 37 of the NDPS Act is attracted. It is further submitted by learned State counsel that in case, the petitioner is extended the benefit of regular bail then there is every likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, it is urged that the petitioner do not deserve the concession of regular bail and thus the instant petition may be dismissed. However, it is fairly conceded by learned State counsel that the petitioner has been in custody since 30.11.2020; investigation in the case is complete, challan stands presented on 25.01.2021; charges have also been framed on 11.04.2022 and no prosecution witness has been examined till date.

While referring to the custody certificate, learned State counsel has submitted that the petitioner has been in custody for 02 years 05 months and 28 days (as on 29.05.2023) and there is no other case pending against him.

8. I have heard learned counsel for the parties and perused the paper book as well as status report and custody certificate of the petitioner.

9. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly it is apposite to refer to a few judgments rendered by Hon'ble Supreme Court.

10. The Hon'ble Supreme Court in ***Chitta Biswas @ Subhas v. State of West Bengal (Criminal Appeal No. 245 of 2020 dated 07.02.2020)*** observed as under:-

“ xxx

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.”

11. The Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan v. State of West Bengal (Special Leave(Crl.) no. 5769 of 2022)*** held as under:-

“ xxxx

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.”

12. In ***Shariful Islam @ Sarif v. State of West Bengal (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022)***, the Hon'ble

Supreme Court held that:-

*“ 1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of West Bengal and carefully perused the material available on record.
2. Taking into consideration the fact that the petitioner is reported to be in custody since 27.12.2021 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.
4. The Special Leave Petition stands disposed of on the above terms.
5. Pending application filed in the matter also stands disposed of.”*

13. In ***Karnail Singh v. State of Odisha (Criminal Appeal no. 2027 of 2022 dated 22.11.2022)***, Hon'ble Supreme Court held as under:-

*“The appellant in the present case was only a Khalasi of the vehicle who did not run away while the others ran away and have still not been apprehended. He has been in custody from 21.03.2021 i.e. more than a year and a half.
In view of the aforesaid facts and circumstances, we grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.”*

14. The Hon'ble Supreme Court in ***Karim Adaldar v. State of West***

Bengal (Special Leave to Appeal (Crl.) No. 8653 of 2022) held that:-

“Having heard learned counsel appearing for the parties and keeping in view the period of custody already undergone by the petitioner, and there being no likelihood of completion of trial in the near future, but without expressing any views on the merits of the case, the petitioner is ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of learned Additional Sessions Judge, 6th Court, Barasat, District – North 24 Parganas, West Bengal.”

15. Further, Hon’ble Supreme Court vide judgment dated 25.1.2023 arising out of ***SLP No.6690 of 2022***, titled as ***“Dheeraj Kumar Shukla Vs. State of Uttar Pradesh”*** has granted bail in a case registered under the NDPS Act, where the accused alongwith co-accused was found in possession of ‘commercial’ quantity of ‘*Ganja*’ and had been behind bars since the last two and a half years while observing that in the absence of any criminal antecedents, the conditions of Section 37 of the NDPS Act could be dispensed with at that stage, particularly when there was delay in conclusion of trial.

16. In this case, the petitioner is in custody since 30.11.2020. Investigation in the case is complete, challan stands presented on 25.01.2021 and even charges have been framed on 11.04.2022. Learned counsel for the petitioner has placed on record the copies of *zimini* orders to contend that no prosecution witness has been examined till date. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

17. Keeping in view the aforementioned circumstances and the legal position as indicated above, present petition is allowed and petitioner

namely, Gagandeep Singh @ Gagan, is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

18. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

19. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

20. The petition is accordingly disposed of.

21. All pending application(s), if any, shall also stand closed.

July 24th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No