

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-7453-2023 (O & M)****Date of decision: 16.02.2023**

Ram Rattan

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rakesh Kumar Lathwal, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.263 dated 17.07.2020 under Section 20 of the NDPS Act, 1985 registered at Police Station Kalanaur, District Rohtak (Haryana).

3. The brief facts of the case are that a secret information was received that Tajudin alias Rohtash, Ramrattan alias Kala (petitioner) and Arvind Rahut were engaged in the business of supply of Charas and would be coming towards Beri in vehicle No.HR21N-0602 Mark Maruti Swift, colour White. If a barricading was done, they could be apprehended. Thereafter, after complying with the provisions of Section 42 of the NDPS Act, a barricade was set-up and the said 03 accused came to be apprehended. The search of their car revealed that a black colour packet was lying on the rear seat in between two persons. It was found to contain 20 packets of Charas weighing 10 kilos 200 grams.

Based on the said information and subsequent recovery, the FIR came to be registered.

4. The learned counsel for the petitioner contends that the petitioner could not be said to be in conscious possession of the recovered contraband. The vehicle in question does not belong to the petitioner. The co-accused Tajudin alias Rohtash had been granted the concession of default bail vide order dated 07.10.2021 (Annexure P-1). Since the petitioner was in custody since 17.07.2020 and none of the 16 prosecution witnesses had been examined so far, he was entitled to the grant of bail keeping in view of the judgment of the Hon'ble Supreme Court in '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)'.

5. The learned counsel for the State, on the other hand contends that the commercial quantity of contraband has been recovered from the vehicle in which the petitioner was travelling. The nature of the allegations levelled against the accused including the petitioner do not entitle him to the grant of bail. He, however, does not dispute the period of custody as also the stage of Trial.

6. I have heard the learned counsel for the parties.

7. 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 aforestated 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.

8. In the present case, the allegations against the accused shall be substantiated during the course of Trial. The petitioner has undergone a total custody period of 02 years and 07 months. None of the 16 prosecution witnesses have been examined so far. The co-accused has been granted the concession of default vide order dated 07.10.2021 (Annexure P-1). The petitioner is also stated to be first-time offender. Therefore, the further

incarceration of the petitioner is not required and the provisions of Section 37 of the NDPS Act can be diluted to an extent in the facts and circumstances of the present case.

9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Ram Rattan is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case other than the present one.

11. In addition, the petitioner (or someone 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.

(JASJIT SINGH BEDI)
JUDGE

February 16, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No