

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-8535-2023

Date of Decision:-26.05.2023

Kamaljit Kumar @ Harsh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Prateek Pandit, Advocate for the Petitioner.

Ms. Ramta K Chaudhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

This is the 06th petition under Section 439 Cr.P.C. for the grant of regular bail in case bearing FIR No.157 dated 21.09.2019 under Sections 21, 22, 26, 29 of NDPS Act, 1985 and Sections 420, 467, 468, 471 IPC registered at Police Station City Gurdaspur.

2. The brief facts of the case are that Sourabh Abrol and Navdeep Singh were apprehended on 21.09.2019 at about 8.30 PM from the area of T-Point Jhulna Mahal, Geeta Bhawan road, Gurdaspur by a police party headed by SI Davinder Singh of the Anti Narcotic Cell, Gurdaspur on the basis of suspicion of narcotic substances in their conscious possession. They were searched as per procedure prescribed under the NDPS Act. During the search 50,000 loose intoxicant tablets, 05 strips containing total 300 intoxicant tablets of ALPAM-05 and 40 strips containing total 400 intoxicant tablets of Tramadol Hydrochloride were recovered from the conscious possession of Saurabh Abrol and Navdeep Singh which were

being carried by them on a motor cycle being driven by Sourabh Abrol on which Navdeep Singh was a pillion rider.

Accused Saurabh Abrol suffered his disclosure statement on 22.09.2019 before the investigating officer to the effect that the contraband had been purchased by them from Kamaljit Kumar (petitioner) owner of Harsh Medical Store, Geeta Bhawan road, Gurdaspur. Therefore, the petitioner was nominated as a co-accused in the present case vide GD No.54 dated 22.09.2019.

During the course of police remand Saurabh Abrol further disclosed that the petitioner was the owner of the Harsh Medical Store and would receive a consignment of contraband through courier service, namely, ON DOT Courier Company, Ambala, Haryana at the courier office, Library Chowk, Gurdaspur. Pursuant thereto during the course of investigation the premises of ON DOT Courier Company, near Aggarwal Book Store was searched and a parcel in the name of Harsh Medical Store was found lying there which had been sent from Ambala. It was found to contain 20,000 intoxicant tablets of Tramadol Hydrochloride.

During the course of investigation, on the basis of the statement of Sunil Kumar employee of the ON DOT Courier Company and as per the scrutiny of bill and invoice it was revealed that the parcel containing 20,000/- intoxicant tablets was sent to Barara, District Ambala, Haryana in the name of Harsh Medical Store by Parmod Rana C/o Seoul Pharma Care, near Gaur Model School, Subash Nagar, Shahbad, Markanda, District Kurukshetra, Haryana. Therefore, further investigation was carried out and one Mohan an employee of the courier company was joined in the investigation. It was revealed that the Rahul son of Jaswant Singh resident of Thambarh, Police Station Marara, District Ambala, Haryana and Parmod

Rana @ Pritam son of Krishan Singh resident of Mora, Saharanpur, Uttar Pradesh had got delivered the aforesaid parcel in the name of Harsh Medical Store. They had earlier delivered other parcels as well. The invoice of the Seoul Pharma was verified from the concerned firm and it was disclosed by Om Parkash, owner of the firm that the invoice produced before the courier company by accused Rahul and Parmod Rana was fake and forged and had not been issued by Om Parkash. Therefore, Rahul and Parmod Rana @ Pritam were also nominated as accused in this case and were arrested on 25.09.2019 in the present case bearing FIR No.157 dated 21.09.2019 under Sections 21, 22, 26, 29 of NDPS Act, 1985 and Sections 420, 467, 468, 471 IPC registered at Police Station City Gurdaspur and offence under Section 29 NDPS Act read with Section 420, 467, 468, 471 IPC were added vide GDR No.25 dated 26.09.2019.

During investigation accused Rahul and Parmodh Rana @ Pritam disclosed that they used to purchase contraband from Saurav Garg owner of Full Forde Health Care, Mohalla Kishanpura, Saharanpur, Uttar Pradesh. Therefore, Saurav Garg was also nominated as a co-accused and was arrested on 29.09.2019. On the basis of his disclosure statement Manish Sharma owner of Sharma Medical Store, Muzaffarnagar, U.P. was nominated as accused in the present case.

Manish Sharma was joined in the investigation on 27.11.2019 but his arrest was deferred as no incriminating evidence has come against him. However, it was revealed that Saurav Garg on account of money dispute with Manish Sharma had levelled false allegations against him (Manish Sharma). In fact Saurav Garg used to purchase intoxicant medicines from one Shamim Ahmad son of Khalil Ahmad resident of Mahtore, District Bijnor, Uttar Pradesh (since granted bail vide order dated

01.08.2022 passed in CRM-M-30657-2022 (Annexure P-9) who was nominated as co-accused and was arrested in the present case on 27.11.2019. 1500 intoxicant injections were recovered from his possession. On Forensic analysis it was found to contain Pentazocine Lactate-27.50 mg/ml.

Meanwhile, the petitioner was arrested in the present case on 27.09.2019 and 15000 intoxicant tablets were recovered from him.

Thereafter the report under Section 173 (2) Cr.PC was submitted against Kamaljit Kumar @ Harsh (petitioner), Saurabh Abrol, Navdeep Singh, Rahul Kumar @ Mintu, Parmodh Rana @ Pritam, Shamim Ahmad and Saurav Garg on 19.03.2020.

3. The learned counsel for the petitioner contends that the petitioner has been in custody since 27.09.2019. Only 04 out of 25 cited prosecution witnesses have been examined so far after which the proceedings before the Trial Court had been stayed by this Court vide order dated 14.09.2022 (Annexure P-7) on a petition filed by wife of Saurabh Abrol the main accused in the present case. The petitioner was otherwise a licenced chemist and had been falsely implicated at the instance of the investigating agency. In fact pursuant to his arrest in the present case he had been falsely implicated in FIR No.47 dated 11.08.2019 in which case he had been granted the concession of regular bail by this court vide order dated 09.30.2020 (Annexure P-13).

In view of the aforementioned facts and more so on account of his lengthy incarceration the petitioner ought to be granted the concession of regular bail as the Trial of the present case had also been stayed. Reliance is placed on the judgments of Hon'ble Supreme Court in the 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** and **Chet Ram @ Ram Veer Vs. Union of India Special Leave to Appeal (Crl.) No(s).1166/2023 Dated 15.03.2023.**

4. The Counsel for the State on the other hand while referring to the replies dated 8.4.2023 and 09.05.2023 filed by Mr. Mangal Singh, DSP City-cum Crime Against Women, District Gurdaspur contends that the petitioner and his co-accused were dealing in the sale of contraband and a huge quantity of the same had been recovered from the petitioner and his co-accused. Therefore, the serious nature of the allegations levelled against the petitioner and in terms of the bar contained under Section 37 of the NDPS Act, did not entitle him to the grant of bail. She however, does not deny the fact that the petitioner is in custody since 27.09.2019, only 04 out of 25 prosecution witnesses had been examined and thereafter the proceedings before the Trial Court had been stayed. He further fairly admits that in the other case registered against the petitioner bearing FIR No.47 dated 11.08.2019 the petitioner has been granted the concession of bail by this Court vide order Annexure P-13.

5. I have heard learned Counsel for the 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 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.

The Hon'ble Supreme Court in **Chet Ram @ Ram Veer Vs. Union of India Special Leave to Appeal (Crl.) No(s).1166/2023 Dated 15.03.2023** held as under:-

“ The petitioner's application for bail was rejected; he is charged with committing offences under Section 8, 20, 25 and other provisions of the Narcotic Drgus and Psychotropic Substances Act, 1985. The record indicates that one out of 10 prosecution witnesses have been examined.

Learned Counsel for the State opposed the grant of

bail submitting that the petitioner has criminal antecedents and was charged with committing an offence under Section 307 IPC and has also been charged with committing offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 in another FIR.

Apparently the petitioner was acquitted in the case where he charged with committing the offence under Section 307 IPC. As far as the other FIR alleging offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 is concerned, he has been enlarged on bail.

Considering the circumstances- especially that he has undergone detention for 3 and a half years and the conclusion of trial is most likely in the distant future, he is enlarged on bail subject to such conditions as the trial Court deems appropriate to impose on him.

Special leave petition is allowed in the above terms.

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

7. Coming back to the facts of the instant case, it may be pointed out that the petitioner has been in custody since 27.09.2019 and only 04 out of 25 cited prosecution witnesses had been examined. Thereafter, the proceedings before the Trial Court have been stayed. In the other case registered against the petitioner bearing FIR No.47 dated 11.08.2019, the petitioner has been granted the concession of bail by this Court vide order Annexure P-13. In such a situation, the further incarceration of the petitioner is not required as the provisions 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-**Kamaljit Kumar @ Harsh** son of

Satish Kumar 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 cases mentioned in this order.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- 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

May 26, 2023

Vinay

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