

CRM-24323-2023 in CRM-M-8442-2023-2023

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

CRM-24323-2023 in/and
CRM-M-8442-2023

Date of Decision: 01.06.2023

SHIV KUMAR @ MONU

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. S.P.S. Khaira, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

JASJIT SINGH BEDI, J.

CRM-24323-2023

This is an application filed under Section 482 Cr.P.C. for preponing the date of hearing in the case i.e. fixed for 31.07.2023.

Notice in the application.

Mr. Kirat Singh Sidhu, D.A.G, Punjab accepts notice on behalf of the respondent-State.

For the reasons mentioned in the application, the same is allowed and the date of hearing is preponed from 31.07.2023 to today and the matter is taken up on board today itself.

CRM-M-8442-2023

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.99 dated 15.05.2021 (Annexure P-1) registered under Sections 22/61/85 of the NDPS Act, at Police Station Khanna City-2 , District Ludhiana.

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2. The brief facts of the case are that a barricade had been put up in front of Pristine Mall, Khanna, Delhi-Ludhiana Highway. At that time, from the side of Gobindgarh, one Swift car bearing No.PB-10-BN-3131 in which three young men were travelling was stopped. The driver disclosed his name as Rajdeep Singh (granted bail vide order dated 17.05.2023 passed in CRM-M-23627-2023) son of Karamjit Singh, the person sitting on the front disclosed his name as Shiv Kumar @ Monu (petitioner) son of Ashok Kumar and the person sitting on the back seat disclosed his name as Gurpreet Singh (granted bail vide order dated 17.05.2023 passed in CRM-M-24202-2023) son of Swaran Singh. Two heavy weight coloured plastic bags were seen on the back seat of the car. The plastic bags were searched and found to contain 500 bottles of Siorex Syrup leading to the registration of the present FIR.

3. The learned counsel for the petitioner contends that in fact, 500 bottles of Siorex Syrup were ordered to be supplied by M/s Gupta Enterprises to M/s Himalaya Drug Medicos, Baddi, Himachal Pradesh. Both the seller as well as the purchaser had valid licences for the sale and purchase of the contraband. As the bill in question had been authenticated, the further custody of the petitioner was not required as it would be a matter of adjudication during trial as to whether an offence was made out or not. Even otherwise, the petitioner was a mere transporter at best. In addition, he contends that as the petitioner was a first-time offender and had undergone 02 years custody, he was entitled to the concession 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

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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. On the other hand, the learned State counsel contends that the bill in question has been found to be fictitious during collateral proceedings arising out of an anticipatory bail petition filed by a co-accused. He, however, concedes the fact that the petitioner is in custody since 02 years, is a first-time offender and none of the 14 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

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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.

7. In the instant case, the petitioner is stated to be in custody from the last 02 years. None of the 14 prosecution witnesses have been examined so far. The petitioner is also a first-time offender with no other case registered against him under the NDPS Act. In such a situation, the rigors of Section 37 of the NDPS Act can be diluted 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, moreso, when two of his co-accused namely, Gurpreet Singh and Rajdeep Singh have been granted the similar concession.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Shiv Kumar @ Monu son of Ashok 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.

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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.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- 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

01.06.2023

JITESH

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