

2023:PHHC:105787

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****SR. No.216****CRM-M-9802-2023 (O&M)****Date of decision:16.08.2023****Pankaj Sharma****...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr.Vivek Thakur, Advocate,
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Ms. Vandana Kohli, Advocate/Amicus Curiae.

N.S. SHEKHAWAT, J.

1. Petitioner prays for grant of bail pending trial in FIR No.56 dated 01.06.2021 registered under Sections 22/61/85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Bholath, District Kapurthala.

2. As per the case of the prosecution, Jasbir Singh SI/SHO along with police officials was present at Bholath to Kartarpur Road, in connection with patrolling and a secret informer informed that Pankaj Sharma, son of Baldev Raj resident of Ward No.5, Bholath and Raman Kumar son of Ashok Kumar, resident of Ward No.3, Bholath were selling intoxicating substances and injections and they were coming from the side of Kartarpur and were carrying large quantity of such injections in their bag. If a raid was

conducted, they could be apprehended at the spot. In the meantime, two

youngsters were seen coming from Kartarpur side and were asked to stop. When they tried to abscond, they were apprehended by the police officials and on inquiry, they told their names and addresses as Pankaj Sharma, son of Baldev Raj Sharma, resident of Ward No.5, Bholath and Raman Kumar son of Ashok Kumar resident of Ward No.3, Khassan Road, Bholath and after the due procedure, the recovery of intoxicating injections was effected from them and they were arrested. As per the record, 17 strips, each strip containing 5 injections, total 85 intoxicant injections mark Buprenorphine injection I.P. Rexogesic 2 ml Ampoules and 85 intoxicant vials were recovered from the present petitioner and he was arrested in the present case.

3. Learned counsel for the petitioner contends that in the present case, the petitioner was arrested on 01.06.2021 and has undergone more than 02 years and 02 months of actual sentence. Even the mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with in the proper manner. He further contends that no independent witness was joined at the time of search and seizure and the trial is at the initial stage itself. Learned counsel further contends that in the present case, the trial is not likely to conclude any time soon and he is entitled to concession of bail in view of the judgments passed by the Hon'ble Supreme Court in the case of **Nitish Adhikary @ Bapan Vs. 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 Hasanujjaman & others Vs The State of West Bengal, SLP (Crl.) No.(s). 3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023.**

4. On the other hand, learned State counsel contends that commercial quantity of contraband has been recovered from the petitioner. Therefore, in view of the bar, contained in Section 37 of the NDPS Act, the petitioner is not entitled to concession of bail. He contends that one more case was registered against the present petitioner, however, he has been ordered to be acquitted in the said case.

5. I have heard learned counsel for the parties and perused the record.

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 aforesaid terms.

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

7. In ***Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023***, decided on 04.05.2023, held as under:-

“1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’) in FIR No.18/2022, dated 09.01.2022, registered at Police Station Islampur, District Murshidabad, West Bengal.

*2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. **They were arrested on the spot and have been in custody for more than one year and four months.***

3. We have heard learned counsel for the parties and carefully perused the record.

*4. **The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.***

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the

petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court.

6. *Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.*

7. *The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.*

8. *The Special Leave Petition stands disposed of in the above terms.*

9. *As a result, pending interlocutory application also stands disposed of.*

(emphasis supplied”)

8. In the instant case, the petitioner is in custody for more than 02 years and 02 months as per the custody certificate. One more case was registered against him, however, he was ordered to be acquitted in the said case. In this situation, the rigors of Section 37 of the NDPS Act can be diluted to an extent in view of the provisions enshrined in Article 21 of the Constitution of India, which provide for right to a speedy trial and the case of the petitioner can be considered for the grant of bail.

9. In view of the above, without commenting any further on the merits, the present **petition is allowed** and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned subject to the following conditions:-

- (i) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him to disclose such facts

to the Court or to any other authority.

- (ii) The petitioner shall remain present before the Court on the dates fixed for hearing of the case.
 - (iii) The petitioner shall not absent himself from the Court proceedings except on the prior permission of the Court concerned.
 - (iv) The petitioner shall surrender his passport, if any, (if already not surrendered), and in case he is not holder of the same, he shall swear an affidavit to that effect.
 - (v) The petitioner shall also file his affidavit before the concerned Court, mentioning his ordinary place of residence and number of mobile phone, which shall be used by him during the pendency of the trial. In case of change of place of residence/mobile number, he shall share the details with the concerned Court/learned Trial Court.
 - (vi) In case, the petitioner involves in any other criminal activity, during the pendency of the trial, it shall be viewed seriously.
 - (vii) The concerned Court may insist for two heavy local sureties and may also impose any other condition, in accordance with law, while accepting the bail bonds and surety bonds of the petitioner.
 - (viii) The petitioner shall report every first Monday in English calander month before the concerned SHO between 10.00 AM to 01.00 PM till the conclusion of the trial and SHO shall mark his presence by making an entry in the rojnamcha.
10. However, it is made clear that in case the petitioner does not comply with the conditions as mentioned above, the State shall be at liberty to move an application for cancellation of bail granted to him. It is also made clear that in case the concerned SHO does not mark the presence of the petitioner in the rojnamcha, the petitioner shall be at liberty to move an appropriate application in this regard before the court of trial Court/Duty

Magistrate/Chief Judicial Magistrate.

11. Needless to say that above observations are made only for the limited purpose of deciding the bail application and may not be construed as an expression of opinion on the merits of the case.

16.08.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO