

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-9520-2023
Date of decision : 28.02.2023

Surjit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rituraj Singh, Advocate
for the petitioner.

Mr.Rohit Ahuja, DAG, Punjab.

VIKAS BAHL, J.(ORAL)

The present petition has been filed under Section 439 Cr.P.C.
for grant of regular bail to the petitioner in case FIR No. 164 dated
08.06.2020 under Section 22 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 registered at Police Station Patran, District Patiala.

Learned counsel for the petitioner has submitted that the
petitioner has been in custody since 08.06.2020 (more than 2 years, 8
months and 20 days) and there are as many as 13 prosecution witnesses out
of whom, none have been cross-examined, although, examination in chief of
witnesses has been recorded and thus, the trial is likely to take time and the
witnesses are not appearing inspite ofailable warrants having been issued
against them and the present petitioner is not involved in any other case.

Learned counsel for the petitioner has relied upon various orders of the
Hon'ble Supreme Court, wherein, solely on the basis of the custody, the

concession of bail has been granted. Reliance has also been placed upon an order of the Hon'ble Division Bench of this Court in **CRM-3773-2019 in CRA-D-198-DB-2017** titled as **“Bhupender Singh vs Narcotic Control Bureau”** to contend that keeping the petitioner in further incarceration would be violative of the right of the petitioner enshrined under Article 21 of the Constitution of India and in the said orders, the accused have been released solely on the basis of length of custody period.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the quantity involved in the present case is of commercial quantity, thus, the bar under Section 37 of the NDPS Act applies.

This Court has heard learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court in the order dated 22.08.2022 passed in **Special Leave to Appeal (Crl.) No.5530-2022** titled as **“Mohammad Salman Hanif Shaikh Vs. The State of Gujarat”** was pleased to observe as under: -

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

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

The above-said case was also a case under the NDPS Act, 1985

and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Hon'ble Supreme Court had observed that the concession of bail was granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

The Hon'ble Supreme Court in ***Criminal Appeal No.245/2020*** titled as ***"Chitta Biswas Alias Subhas Vs. The State of West Bengal"***, vide order dated 07.02.2020, was pleased to grant the concession of bail to the petitioner (therein) in a case where the custody was 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is reproduced as under: -

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

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."

In another case i.e., ***Criminal Appeal No.1169 of 2022*** titled as ***"Gopal Krishna Patra @ Gopalrusma Vs. Union of India"***, vide order dated 05.08.2022, the Hon'ble Supreme Court was pleased to observe as under: -

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.

We therefore, direct that:

(a) The appellant shall be produced before the Trial Court within five days from today.

(b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.

(c) The appellant shall not in any manner misuse his liberty.

(d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

case also the custody was of approximately 2 years, 1 month and 17 days and the case was under the NDPS Act, 1985 and primarily, considering the length of the custody period, concession of bail was granted to the petitioner (therein).

The Hon'ble Supreme Court of India in ***Special Leave to Appeal (Crl.) No.5769/2022*** titled as ***"Nitish Adhikary @ Bapan Vs. The State of West Bengal"***, vide order dated 01.08.2022, was pleased to observe 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 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."

A perusal of the said order would also show that the said case was under the NDPS Act, 1985 and the provision of Section 37 of the

primarily by considering the petitioner (therein) had undergone custody for a period of 01 year and 07 months and only one witness had been examined and that the petitioner (therein) did not have any criminal antecedents.

The Division Bench of this Court in *Bhupender Singh's* case (Supra), had also held that in case, the accused person is able to make out a case within the parameters of Article 21 of the Constitution of India in view of length of the custody period, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act.

In the present case, the petitioner has been in custody since 08.06.2020 (more than 2 years, 8 months and 20 days) and the challan has already been presented and out of 13 witnesses, none have been crossexamined, although, examination in chief of 9 witnesses has been recorded thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case.

Keeping in view the above said facts and circumstances as well as the law laid down in the above said judgments, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is an accused, or for commission of which

he is suspected.

- 5. 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/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

February 28, 2023
Davinder Kumar

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