

2023:PHHC:095786
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11330 of 2022
Date of Decision: 27.07.2023

Talwinder Singh @ Babbar

... Petitioner

VERSUS

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Amarjot Kaur, Advocate for the petitioner.
Mr.C.L.Pawar, Addl. A.G., Punjab.

HARNARESH SINGH GILL, J (ORAL)

Through this petition, the petitioner seeks regular bail in case FIR No.101 dated 16.06.2021 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Doraha, District Khanna.

Learned counsel for the petitioner submits that the petitioner who is a driver by profession and was hired for a day and had no knowledge regarding the contraband which has been recovered beneath the driver seat. She further submits that though the recovery effected from the petitioner is of commercial quantity, yet the fact remains that the petitioner in custody for the last more than 02 years 01 month and out of 13 prosecution witnesses only 01 prosecution witness has been examined and there is no other NDPS case registered or pending against the petitioner. In support of her contentions, learned counsel relies upon the orders dated 22.08.2022 passed by the Hon'ble Supreme Court in SLP (Crl) No.5530/2022 titled as 'Mohammad Salman Hanif Shaikh Vs. State of Gujarat, and order dated 04.05.2023, passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 3221/2023, titled as 'Hasanujjaman & Ors Vs. The State of West Bengal'.

The learned State counsel while opposing the bail application submits that the petitioner was driving the car and recovery was effected from the beneath the driver seat and Section 37 bars the grant of bail to the accused in case of commercial quantity and the material prosecution witnesses are yet to be examined.

I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in Hasanujjaman & Ors. (supra), while granting the benefit of bail to the petitioners therein, has held as under:

“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.”

Though the recovery effected from the petitioner is of commercial quantity and the petitioner is in custody from the last 2 years and 01 month. 12 prosecution witnesses are yet to be examined. There is no NDPS case registered or pending against the petitioner. Trial of the case would take time to conclude. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/ Duty Magistrate.

(HARNARESH SINGH GILL)
JUDGE

27.07.2023
raman

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