

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-11246-2023 (O&M)
Date of Decision: 24.07.2023**

DAVINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Puneet Jindal, Senior Advocate
with Mr. Tajinder Singh, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

Prayer in the present petition, filed under Section 439 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), is for grant of regular bail to the petitioner in case FIR No.0081 dated 27.06.2022 (Annexure P-1), registered under Sections 18 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Dirba, District Sangrur.

2. Reply by way of an affidavit of Sh. Prithvi Singh, P.P.S., Deputy Superintendent of Police, Sub Division Dirba, on behalf of respondent-State of Punjab, has been filed, which is already on record.

3. Briefly, the above-said case FIR was registered on the basis of *ruqa* sent by ASI Darshan Singh, Police Station Dirba; wherein, it was stated that on 27.06.2022, while he along with the fellow employees, was going from Village Kadiyal to Village Munsiwala, on a private vehicle along with laptop, printer and inverter, in connection with patrolling and checking of

suspicious persons then around 10:30 a.m., when they reached near the culvert of chow of Village Munsiwala, then from the side of Village Samura, one young boy was seen coming on foot alongside the chow who was wearing black coloured turban (patka), white coloured shirt and light coffee coloured trouser and was also carrying a weighty bag in his hand. It is stated that on seeing the police party ahead, he got nervous and tried to throw away the bag and run towards paddy fields. However, he was apprehended with the help of police party. Upon enquiry, he disclosed his name as Davinder Singh (petitioner) son of Pritam Singh resident of Munsiwala Police Station Dirba. It is further stated that when he (ASI Darshan Singh) moved to the weighty bag lying near the footpath of the chow thrown by Davinder Singh, he saw that near the bag, strips of intoxicant tablets were scattered and one transparent wrapper was there, in which opium was visible. It is stated that upon the tablets mark '*Alprazolam Tablets IP 0.5 mg (ALPRASAFE 0.5)*' was written. Thereafter, ASI Darshan Singh contacted the Inspector Gurpartap Singh, SHO Police Station Dirba and apprised him about the circumstances and he was asked to send a competent officer at the spot for investigation. Accordingly, the *ruqa* was prepared and sent to the Police Station for registration of FIR.

4. As per the reply filed by the learned State counsel, lady Sub-Inspector Anita, Incharge Police Post Kohrian, reached at the spot and saw the strips of intoxicant tablets scattered near the heavy weight bag, opium was visible in a transparent polythene envelope and 230 strips, each containing 10-10 tablets, total 2300 intoxicant tablets mark *Alprazolam Tablets IP 0.5 mg (Alprasaft 0.5)*, batch No.PCCAA916, MFG. Date 03/2022, EXP. Date 02/2025, were recovered. Upon checking the polythene

envelope, 250 grams of *opium* was recovered. On 28.06.2022, Davinder Singh (petitioner) along with case property was produced before the learned Sub Divisional Judicial Magistrare, Sunam; where the samples were drawn and sent for examination; whereupon, the FSL report dated 16.08.2022 was received and the ingredients found present in the parcels were reported as under :-

PARCEL No.1

<i>Alprazolam</i>	<i>Found present, average 0.48 mg/tablet in the tablets contained in the parcel No.1.</i>
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PARCEL No.2

<i>Meconic acid</i>	<i>Found present in the content of the parcel No.2.</i>
<i>Morphine and other Alkaloids of opium</i>	<i>-do-</i>
<i>Quantity of Morphine</i>	<i>4.25% (in the content of the parcel No.2)</i>

5. Thereafter, the petitioner filed an application under Section 439 of the Cr.P.C. for grant of regular bail before the Court of learned Judge, Special Court, Sangrur; however, the same was dismissed vide order dated 04.10.2022. Furthermore, the petition being **CRM-M-4268-2023** for grant of regular bail filed by the petitioner before this Court, was dismissed as withdrawn on 01.02.2023.
6. Hence, instant is the second petition for grant of regular bail filed by the petitioner before this Court.
7. Learned counsel for the petitioner contends that the petitioner is innocent and has falsely been implicated in the present case as no recovery as alleged in the FIR, was made from him. Learned counsel further submits

that the petitioner has no previous criminal antecedents and the instant FIR is an outcome of a political rivalry of village as petitioner is one of the Panch having elected on 30.12.2018. It is submitted that although as per the FIR, the petitioner is shown to be arrested near the 'Choe' at around 10:30 A.M on 27.06.2022; whereas, he was arrested from his house on the same day i.e. on 27.06.2022, much earlier at around 6:30 in the morning. It is further submitted that the police officials came to the house of the petitioner in the early morning in a private vehicle bearing No.PB-11BL-1473 (Make 'Maruti Suzuki' Model Swift VDI) and demanded money in lieu of not involving him in any FIR under the NDPS Act and it is only when the petitioner refused to accede to their demand for bribe, then he was taken in the private vehicle by the police officials and the CCTV cameras installed at the house of the petitioner have recorded the entire incident. Certain relevant photographs taken from the CCTV footage have been attached as Annexure P-3 and Pen Drive containing CCTV footage is also placed on record as Annexure A-1 by way of filing **CRM-18329-2023**. Learned counsel for the petitioner submits that the petitioner has nothing to do with the alleged crime. He further submits that the mandatory provisions of NDPS Act, have not been complied with. It is next submitted that the petitioner was arrested on 27.06.2022 and since then, he is in custody and all the witnesses are official witnesses. Learned counsel further submits that the challan was presented on 26.09.2022; charges were framed on 04.10.2022 and since then, none of the prosecution witnesses have been examined. Thus, the trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. It is stated that the

petitioner is ready and willing to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly, prayer for grant of regular bail is made.

8. Per contra, learned State counsel opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of offence. He further submits that as per the FSL report, the recovery of contraband effected from the petitioner falls under the category of “commercial quantity”, hence bar under Section 37 of the NDPS Act is attracted. However, it is fairly conceded by learned State counsel that the petitioner is in custody since 27.06.2022; investigation in the case is complete, challan stands presented and charges have also been framed. Learned State counsel also concedes that no other case is pending against the petitioner.

9. I have heard learned counsel for the parties and perused the paper book as well as reply filed by learned State counsel. I have also gone through the CCTV footage, which although shows the presence of police in a house, which is claimed to be that of the petitioner; however, there is no video reflecting that the petitioner was taken away alongwith the police party during that period.

10. Be that as it may, the said fact would be subject matter of trial before the trial Court and no opinion is required to be given at this stage.

11. Keeping in view the fact that the petitioner has been in custody since 27.06.2022 and there is no other case pending against him; accordingly it is apposite to refer to a few judgments rendered by Hon'ble Supreme Court.

12. The Hon'ble Supreme Court in *Nitish Adhikary @ Bapan v.*

State of West Bengal (Special Leave(Crl.) no. 5769 of 2022) held as under:-

“ xxxx

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.”

13. In ***Shariful Islam @ Sarif v. State of West Bengal (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022)***, the Hon'ble Supreme Court held that:-

“ 1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of West Bengal and carefully perused the material available on record.

2. Taking into consideration the fact that the petitioner is reported to be in custody since 27.12.2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near

future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him.

4. The Special Leave Petition stands disposed of on the above terms.

5. Pending application filed in the matter also stands disposed of.”

14. In ***Karnail Singh v. State of Odisha (Criminal Appeal no. 2027 of 2022 dated 22.11.2022)***, Hon'ble Supreme Court held as under:-

“The appellant in the present case was only a Khalasi of the vehicle who did not run away while the others ran away and have still not been apprehended. He has been in custody from 21.03.2021 i.e. more than a year and a half.

In view of the aforesaid facts and circumstances, we grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.”

15. Further, Hon'ble Supreme Court vide judgment dated 25.1.2023 arising out of ***SLP No.6690 of 2022***, titled as ***“Dheeraj Kumar Shukla Vs. State of Uttar Pradesh”*** has granted bail in a case registered under the NDPS Act, where the accused alongwith co-accused was found in possession of 'commercial' quantity of 'Ganja' and had been behind bars since the last two and a half years while observing that in the absence of any criminal antecedents, the conditions of Section 37 of the NDPS Act could be dispensed with at that stage, particularly when there was delay in conclusion of trial.

16. In this case, the petitioner is in custody since 27.06.2022. Investigation in the case is complete, challan stands presented on 26.09.2022 and even charges have been framed on 04.10.2022. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

17. In the instant case, the alleged recovery falls under the category of commercial quantity and bar of Section 37 of the NDPS Act is attracted, however, while dealing with Section 37 of the NDPS Act, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence. In the facts and circumstances of the present case and on an assessment of material on record especially, the fact that the petitioner is not involved in any other case under the NDPS Act, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence and he is un-likely to commit an offence under the NDPS Act, while on bail.

18. Keeping in view the aforementioned circumstances and the legal position as indicated above, present petition is allowed and the petitioner namely, Davinder Singh, is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone

number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

19. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

20. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

21. The petition is accordingly disposed of.

22. All pending application(s), if any, shall also stand closed.

July 24th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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