

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH.**

**CRM-M-13618-2021**

**Date of Decision:-18.01.2023**

**Rajinder Kumar @ Happy.**

.....Petitioner.

Versus

**State of Punjab.**

.....Respondent.

**CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Ms. Kanika Ahuja, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

\*\*\*

**JASJIT SINGH BEDI, J. (ORAL)**

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.251 dated 25.11.2020 under Sections 22/61/85 of NDPS Act registered at Police Station City, Phagwara.

2. The brief facts of the case are that while the police party was on patrolling duty they saw a clean-shaved person carrying two bags in his hands. On seeing the police party he started walking briskly. On being apprehended and being asked his name and address, he disclosed his name as Rajinder Sing @ Happy (petitioner). Pursuant thereto the recovery of 14,000 tablets of Clavidol (Tramadol Hydrochloride) 20 litres of intoxicating liquid along with 570 vials came to be effected from him.

3. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. No independent witness was

joined during the course of search and seizure. The mandatory provisions of the NDPS Act had not been complied with. Since the petitioner was in custody since 25.11.2020 and only 01 out of 19 prosecution witnesses had been examined so far, the petitioner was entitled to the grant of bail more so when he had clean antecedents. Reliance is placed on the judgment of Hon'ble Supreme Court in ***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.***

4. The Counsel for the State on the other hand contends that a huge quantity of contraband has been recovered from the petitioner. As such he was not entitled to the grant of bail in view of Section 37 of the NDPS Act. He however, does not deny the fact that the petitioner is a first time offender and is in custody since the last more than 02 years. He also admits the fact that there is no other case registered against the petitioner.

5. I have heard learned Counsel for the parties.

6. The Hon'ble Supreme Court in ***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.”*

The aforementioned decision has been followed by this Court in the case of ***Balraj Singh Vs. State of Punjab CRM-M-57386-2022*** ***Decided on 14.12.2022.***

7. In the present case the petitioner is in custody since 25.11.2020. Only 01 out of 19 prosecution witnesses have been examined so far. The petitioner is a first time offender with no other case under the NDPS Act registered against him. In such a situation the provisions of Section 37 can be diluted to an extent in view of Article 21 of the Constitution of India which provided for the right to a speedy Trial.

8. Thus, without commenting on the merits of the case, the petitioner-**Rajinder Kumar @ Happy** son of Sh. Tarsem Chand is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

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 that he is not involved in any other crime other than the present case.

In addition, the petitioner (or any person on his behalf) shall

prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited in accordance with law in case of the absence of the petitioner from the Trial without sufficient cause.

Petition stands disposed of.

( JASJIT SINGH BEDI )  
JUDGE

January 18, 2023  
Vinay

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