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(212) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 28.11.2023

FARMAN

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Chandra Shekhar Singh, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J.

This 2nd present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.145 dated 04.12.2020 (Annexure P-1) registered under Sections 22 and 25 of NDPS Act, at Police Station Doraha (Khanna), District Ludhiana.

2. The brief facts of the case are that while the police party was on patrolling duty, a Verna Car bearing No.UK07AZ-6333 colour white was seen coming from the side of Khanna and was stopped for checking. Three clean shaven persons were sitting in the car. They were de-boarded and were searched separately. No recovery was effected from any of them. However, since the police party suspected contraband, information was given to the S.H.O. The driver disclosed his name as Arshad (since granted bail vide order dated 06.02.2023 passed in CRM-M-33556-2022) resident of Meerut and the person sitting on the conductor seat stated his name to be Mohd. Imran (granted bail vide order dated 15.03.2023 passed in CRM-M-11708-2023).

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The person sitting on the back seat disclosed his name as Farman (petitioner) son of Abdul Hamid. On opening the boot of the car, the recovery of Alprazolam each box contained 600/500 tablets total number of tablets 5400 B. No.PCCAA610 MFG date 05/2020, expiry date 04/2023, 11 boxes Alpranof-05 each box contained 600/600 of narcotic tablets total 6600 tablets B.No.BL204640003 MFG MAR/20 expiry Feb./22, 5 boxes of Tramadol each box contained 500/500 narcotic tablets total 2500 tablets B.No.TVD202/2 MFG July/2020 expiry June/2023 and some tablets B.No.T/267 MFG. June/2020 and some tablets B.No.T/267 MFG 09/2020 Exp. 05/2022, 60 boxes of Clovidos 100-SR and each box contained 500/500 narcotic tablets total 30,000 tablets and loose 220 strips of Lomotil tablets each strip contained 60/60 narcotic tablets 13200 tablets B.No.03L20018 MFG date 02/2020 expiry date 01/2023 came to be effected.

3. The learned counsel for the petitioner contends that he has been falsely implicated in the instant case. In fact, he had no knowledge about the presence of intoxicating medicines in the dicky of the car. This car belongs to one of the co-accused namely, Arshad who has since been granted the concession of bail vide order dated 06.02.2023 passed in CRM-M-33556-2022. The second co-accused Mohd. Imran has also been granted the concession of bail. Since the recovery was from the dicky, the petitioner could not be stated to be in conscious possession of the same. As he was in custody since 06.12.2020 and only 05 out of the 13 prosecution witnesses had been examined so far and he was a first-time offender, he was entitled to the concession of bail keeping in view the judgment of the Hon'ble Supreme in the case of *Nitish Adhikary @ Bapan Versus The State of West Bengal, SLP*

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(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 Versus 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, the learned State counsel contends that a huge quantity of contraband was recovered from the vehicle. Therefore, it cannot be argued that the petitioner was not in conscious possession of the same. Since 05 out of the 13 prosecution witnesses had already been examined therefore, the Trial of the present case was likely to be concluded soon. In such a situation, the petitioner was not entitled to the grant of bail. He however, admits the fact that the petitioner is a first-time offender, in custody since 06.12.2020 and his co-accused namely, Arshad and Mohd. Imran have been granted the concession of regular by this Court vide orders dated 06.02.2023 and 15.03.2023 respectively.

5. I have heard the learned counsel for the parties.

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 aforestated 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. Whether or not the petitioner could be said to be in conscious possession of the recovered contraband would be a matter of adjudication during the course of Trial. The petitioner is stated to be in custody since 06.12.2020 and is a first-time offender with no other case under the NDPS

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Act registered against him. Only 05 out of the 13 prosecution witnesses have been examined so far and therefore, the Trial of the present case is not likely to be concluded anytime soon. In view of the custody period undergone by the petitioner, the rigors of Section 37 of NDPS Act can be relaxed to an extent in view of the provisions of Article 21 of the Constitution of India which provide for the right to a speedy Trial.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Farman son of Abdul Hameed is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

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

11. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.3,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

28.11.2023

JITESH

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