

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

CRM-M-12313-2023

Date of Decision:-17.03.2023

Mukesh Kumar @ Sanju.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

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

Present:- Mr. Armaan Gagneja, Advocate for the Petitioner.

Ms. Ramta Chowdhary, Deputy 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.15 dated 22.01.2021 under Sections 22(C) of the NDPS Act, 1985 registered at Police Station Sadar, Muktsar, District Sri Muktsar Sahib.

2. The brief facts of the case are that while the police party was on patrolling duty two youngsters holding a plastic bag were seen near the bridge. On seeing the police party they tried to flee from the spot after throwing the polythene bag but were nabbed. They disclosed their names as Mukesh Kumar @ Sanju (petitioner) and Karanvir Singh @Karan. A search of the bag revealed 4800 tablets of RLAM-0.5 therein. Based on the said recovery the instant FIR came to be registered.

3. The Counsel for the petitioner contends that petitioner has been

falsely implicated in the present case. The recovery has been planted upon him. No independent witness has been joined during the course of search and seizure. There was violation of mandatory provisions of the NDPS Act such as Section 42 and 50 and as the petitioner was in custody since 22.01.2021 and none of the 15 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded any time soon and therefore the petitioner was entitled to the grant of bail, more so as he was a first time offender. Reliance is placed upon the judgment of 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*** which has been followed by this Court in ***Balraj Singh Vs. State of Punjab CRM-M-57386-2022 Decided on 14.12.2022***.

4. The Counsel for the State on the other hand contends that commercial quantity of contraband has been recovered from the Petitioner. Therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail.

5. I have heard the 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 aforestated 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, petitioner is in custody since 22.01.2021 and none of the 15 PWs have been examined till date. Therefore, the provisions of Section 37 of the NDPS Act can be diluted to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for a right to speedy Trial and the petitioner can be granted the concession of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Mukesh Kumar @ Sanju** son of Sh. Dharampal Verma 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.

9. 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 one.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

March 17, 2023
Vinay

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