

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

**CRM-M-12636-2023 (O/M)**  
**Date of decision : 14.7.2023**

**Gurdial Singh**

**..... Petitioner**

**Versus**

**State of Punjab**

**..... Respondent**

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

**Present:- Mr. Harjinder Singh, Advocate  
for the petitioner.**

**Mr. Harjinder S. Sidhu, AAG Punjab.**

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**HARSH BUNGER, J.**

- 1. Petitioner (Gurdial Singh) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No. 146 dated 1.6.2021, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station City Phagwara, District Kapurthala.**
- 2. Status report by way of affidavit dated 18.4.2023 of Mr. Jaspreet Singh, P.P.S., Deputy Superintendent of Police, Sub Division Phagwara, Kapurthala, has been filed on behalf of State of Punjab, which is already on record.**

3. Custody certificate dated 18.4.2023 of the petitioner has already been filed by learned State counsel, which is already on record.

4. Briefly, the aforesaid FIR was registered on the complaint of ASI Jaswant Rai, who stated that on 1.6.2021 when he alongwith Head Constable Jagroop Singh was patrolling on a motorcycle regarding search of bad persons and when they reached at the bus stand then one person with beard was seen coming from the side of godowns. When the aforesaid police personnels approached him then the aforesaid suspicious person immediately tried to turn back and he threw away a ploythene bag held by him in his right hand on the ground whereupon the complainant ASI Jaswant Rai alongwith his companion apprehended him on the basis of suspicion. He was asked about his whereabouts whereupon he told his name as Gurdial Singh son of Amar Singh. Upon checking the polythene bag thrown by the petitioner on the ground, it was seen that there were 1200 light orange coloured intoxicant tablets. The said information was given to SHO Sanjeev Kumar, who alongwith police party reached at the spot where the aforesaid suspicious person was presented before him. Thereafter, the search of the polythene bag was carried out and 1200 intoxicant tablets (light orange coloured tablets) without any label were recovered. The said persons could not produce any license or permit for having the intoxicant tablets. Accordingly, samples were drawn and the FIR in question was registered.

5. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated. It is submitted that no offer was

made to the petitioner to get the search conducted from a Gazetted Officer or from any Magistrate and neither any independent witness was joined during the search. It is further submitted that a false case has been foisted upon the petitioner as the petitioner is not involved in any other case under the NDPS Act. It is stated that the petitioner has been in custody since 1.6.2021, investigation in the case is complete, challan stands presented and even charges have been framed. Thus, it is contended that the trial would take time to conclude and no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. It is submitted that the petitioner is ready to comply with any condition, as may be imposed by this Court or by the trial Court. Accordingly, prayer has been made for grant of regular bail to the petitioner.

6. Per contra, learned State counsel has opposed the plea of petitioner for grant of regular bail on the ground of seriousness of offences by submitting that the intoxicant tablets recovered from the petitioner contained 'Alprazolam' and the total quantity of 'Alprazolam' comes to 147.6 grams, which falls in the category of 'commercial quantity', thus, bar under Section 37 of the NDPS Act is attracted. It is further submitted that the investigation in the case is complete, challan stands presented and even charges have been framed, however, out of thirteen witnesses, only two witnesses have been examined, however, other material witnesses are yet to be examined in this case. It is submitted that in case the petitioner is released on bail then he may abscond or tamper with prosecution witnesses. Accordingly, it is prayed that the regular bail petition of the petitioner be

dismissed.

7. I have heard learned counsel for the parties and perused the paper book as well as status report and custody certificate of the petitioner.

8. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly it is apposite to refer to the judgments rendered by Hon'ble Supreme Court.

9. The Hon'ble Supreme Court in *Chitta Biswas alias Subhas v. State of West Bengal* (Criminal Appeal No. 245 of 2020 dated 7.2.2020) observed as under:-

“xxx

*The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.*

*According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.*

*The appellant was arrested on 21.7.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.*

*Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:*

*(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail. (b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.*

*With the aforesaid directions, the appeal stands allowed.”*

10. 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 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 1 year and 7 months as on 9.6.2022. 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.”*

11. In *Shariful Islam alias Sarif v. State of West Bengal* (Special Leave to Appeal (Crl) 4173 of 2020 dated 4.8.2022), 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.”*

12. 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 21.3.2021 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.”*

13. The Hon'ble Supreme Court in *Karim Adalddar v. State of West Bengal* (Special Leave to Appeal (Crl.) No. 8653 of 2022) held that:-

*“Having heard learned counsel appearing for the parties and keeping in view the period of custody already undergone by the petitioner, and there being no likelihood of completion of trial in the near future, but without expressing any views on the merits of the case, the petitioner is ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of learned Additional Sessions Judge, 6th Court, Barasat, District – North 24 Parganas, West Bengal.”*

14. 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 Narcotic Drugs and Psychotropic Substances 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 Narcotic Drugs and Psychotropic Substances Act could be dispensed with at that stage, particularly when there was delay in conclusion

of trial.

15. In this case, the petitioner has been in custody since 1.6.2021 and as per the custody certificate, petitioner has undergone total custody of one year, ten months and eighteen days (as on 18.4.2023). Investigation in the case is complete, challan stands presented on 26.11.2021 and even charges have been framed on 10.2.2022. As per status report, out of total thirteen witnesses, only two witnesses have been examined. As per the custody certificate, the petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude. Even as per the FIR, the petitioner is alleged to have thrown the polythene bag (allegedly containing contraband) on the ground, thus, the issue of conscious possession of allegedly recovered contraband would be a debatable issue.

16. In the instant case, the alleged recovery falls under the category of commercial quantity and bar of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted, however, while dealing with Section 37 of the Narcotic Drugs and Psychotropic Substances 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 of the present case and on an assessment of material on record, I am of the prima facie view at this stage that the petitioner may not have committed the alleged offence. Further, considering the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, there is nothing on record to suggest that he is likely to commit an offence under the

Narcotic Drugs and Psychotropic Substances Act, while on bail.

17. Keeping in view the aforementioned circumstances and the legal position as indicated above, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa 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.

18. 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.

19. 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.

20.           The petition is accordingly disposed of.
21.           All pending application(s), if any, shall also stand closed.

(HARSH BUNGER)  
JUDGE

14 .7.2023.  
sjks

Whether speaking/reasoned order           :     Yes / No

Whether Reportable                               :     Yes / No