

216

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

**CRM-M-14209-2022
Date of Decision: 17.05.2023**

Sahil Sharma

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Barjinder Singh, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, AAG, Punjab.

HARSH BUNGER J. (ORAL)

1. Petitioner (Sahil Sharma) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.78 dated 05.05.2021, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Bhawanigarh, District Sangrur.

2. Custody certificate dated 16.05.2023 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

3. Succinctly, the aforesaid FIR was registered on the complaint of Assistant Sub Inspector Jagtar Singh, wherein it was stated that on 05.05.2021, he, along with other police officials, was going towards Channo

through under-bridge situated on Samana Road, going from Bhawanigarh to

Nabha, on a government vehicle bearing registration No.PB-13-BE-3707, being driven by A. Jaswinder Singh, for patrolling and checking of suspicious persons. When the police party reached under Balad Kainchiyan bridge within the territorial jurisdiction of City Bhawanigarh then at about 05:30 P.M., one young boy holding black colour heavy plastic envelop in his right hand was seen under the bridge at the right side, who upon seeing the police party, got perplexed and abruptly rushed towards Samana Road after throwing the plastic envelop from his hand. This incident created a suspicion upon the said boy and he was apprehended by Assistant Sub Inspector Jagtar Singh with the help of other officials. *Ruqa* was prepared and sent to Police Station for registering the FIR.

4. During interrogation, the boy disclosed his name as Sahil Sharma (petitioner) s/o Vipin Sharma and upon checking of the aforesaid plastic envelop, which was thrown by the petitioner, 300 grams of narcotic powder was recovered.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR No.78 dated 05.05.2021. It is submitted the alleged recovery was not effected from the conscious possession of the petitioner. It is stated that no independent witness was joined at the time of alleged recovery and all the witnesses in the present case are police officials. Further, no Gazetted Officer was called for on the spot of alleged occurrence to supervise the recovery proceedings. The search and recovery proceedings were conducted by an unauthorized officer. Moreover, seizing officer was made the Investigating Officer as well. Learned counsel submits that all the aforesaid instances are clear violation of the mandatory provisions of the Narcotic Drugs and

Psychotropic Substances Act. Learned counsel states that the petitioner was earlier granted the concession of interim bail by the Judge, Special Court, Sangrur, vide order dated 28.07.2021 (Annexure P-3), till presentation/receipt of challan. Subsequently, after presentation of challan, the petitioner again applied for regular bail, however, the same was wrongly declined vide order dated 07.03.2022 (Annexure P-3) by the Court of Judge, Special Court, Sangrur. Learned counsel contends that no other case is pending against the petitioner and moreover, he has undergone custody for a period of one year, five months and two days in the present case (as on 16.05.2023); investigation in the case is complete, challan stands presented on 23.11.2021 and even charges have been framed on 07.03.2022. It is contended that out of the total fourteen prosecution witnesses, four have been examined by now. Trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready 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.

6. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of offences. However, it is fairly conceded by learned State counsel that the petitioner is in custody for a period of one year, five months and two days in the present case; 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.

7. I have heard learned counsel for the parties and perused the

paper book as well as 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 @ Subhas v. State of West Bengal (Criminal Appeal No. 245 of 2020 dated 07.02.2020)*** 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 21.07.2018 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 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.”

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

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 21.03.2021 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.”

13. The Hon'ble Supreme Court in **Karim Adaladar 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 is in custody for a period of one year, five months and two days in the present case (as on 16.05.2023). Investigation in the case is complete, challan stands presented on 23.11.2021 and even charges have been framed on 07.03.2022. Trial in the case is likely to take some time to conclude. As per custody certificate, there is no other case pending against the petitioner. Even as per the F.I.R., the petitioner is alleged to have thrown a plastic envelop (allegedly containing contraband) on the road after seeing the police, 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.

17.05.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No