

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

CRM-M-18843-2021

Date of Decision:-09.01.2023

Balwinder Singh @ Binder.

.....Petitioner.

Versus

State of Haryana.

.....Respondents.

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

Present:- Mr. P.S. Sekhon, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

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.343 dated 09.09.2020 under Sections 22-C, 27 & 29 of NDPS Act, 1985 registered at Police Station Sadar Fatehabad, District Fatehabad.

The brief facts of the case are that a secret information was received that Balwinder Singh @ Binder was doing the business of selling intoxicating tablets after bringing the same to his known customers/drug addicts. He was coming from the area of Fatehabad for selling intoxicating tablets and could be apprehended if immediate action was taken.

Based on the aforesaid information after due compliance of the provisions of the NDPS Act, the police party proceeded to spot disclosed in the secret information and the petitioner was apprehended carrying a plastic

polythene of white colour on his shoulder. The search of the bag revealed 2300 strips of Tedol-100 each containing 10/10 tablets totalling 23000 intoxicant tablets. Thereafter, the FIR in question came to be registered.

The Counsel for the petitioner contends that there has been non compliance of Section 42 and Section 50 of the NDPS Act. No private person was joined in the police party at the time of conducting search and seizure and the entire recovery has been foisted upon the petitioner. Since he was a first time offender and in custody since 09.09.2020 his further incarceration was not required as none of the 14 prosecution witnesses have been examined so far. Reliance is place on the judgment in ***Ghanso @ Kalo Vs. State of Punjab CRM-M-20629-2022 Decided on 31.05.2022, Balraj Singh Vs. State of Punjab CRM-M-57386-2022 Decided on 14.12.2022*** and ***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.***

The Counsel for the State on the other hand submits that a huge quantity of contraband has been recovered from the petitioner. Therefore, the rigors of Section 37 of the NDPS Act would not entitle him to the grant of bail. He however, does not dispute the fact that the Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan's case (supra)*** has granted bail to the accused therein where he had undergone 01 year and 07 months of custody.

I have heard learned Counsel for the parties at length.

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 judgment 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.*** Similarly this Court in the case of ***Ghanso @ Kalo (supra)*** granted bail to the petitioner therein where she had undergone three years of custody while placing reliance on various judgments of the Hon'ble Supreme Court and this Court.

In the present case, the petitioner is in custody since 09.09.2020. None of the 14 prosecution witnesses have been examined so far. The petitioner is a first time offender with one other case registered against him under the NDPS Act. In view of the custody period already undergone by the petitioner the rigors of Section 37 of the NDPS Act can be

relaxed to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides the right to a speedy trial.

In view of the aforementioned facts as the trial is not likely to be concluded in the near future the further incarceration of the petitioner is not required.

Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner-**Balwinder Singh @ Binder** son of Bachan Singh 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 one 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 as per law in case of the absence of the petitioner from trial without sufficient cause.

The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 09, 2022
Vinay

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