

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

CRM-M-18127-2023

Date of Decision:-19.10.2023

Nek Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Parminder Singh Sekhon, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate 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 30.03.2021 under Section 22-C, 25 and 29 of the NDPS Act, 1985 and Section 473 IPC registered at Police Station Thuliwal, District Barnala.

2. The brief facts of the case are that while the police party was on patrolling duty secret information was received that Raju Singh @ Raja, Nek Singh (petitioner) and Major Singh in connivance with each other by using two vehicles used to supply the intoxicant tablets in the villages of District Barnala. They had forged/fabricated the registration numbers of the said vehicles. If a *nakabandi* was set up they could be apprehended.

Based on the aforementioned information, a *nakabandi* was set up and the recovery of 100 boxes of Celcidal-100 SR each box containing 50 strips each strip having 10 tablets total 50,000 intoxicant tablets and from

the back seat of the Car 40 boxes of Celcidal-100 SR each box containing 50 strips each strip containing 10 tablets total 20,000 intoxicant tablets and 30,000 loose intoxicant tablets of white colour came to be effected from the dicky of Verna Car in which Major Singh and Nek Singh were travelling.

During the course of further investigation, the recovery of Rs.10 lacs was effected from Major Singh. Gurcharan Singh was nominated as accused at the instance of above named accused persons. On 01.04.2021 accused Raju Singh @ Raja was arrested and recovery of 1,02,000 intoxicant tablets along with an I-20 Car bearing registration number PB-11-CN-0909 came to be effected from him. During further investigation on 5.4.2021 the recovery of 1200 intoxicant tablets and Rs.1,30,000/- drug money came to be effected from him.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with in their proper perspective. No independent witness was joined at the time of search and seizure. He was in custody for more than 02 years and 06 months i.e. since 30.03.2021. Only 05 of the 32 prosecution witnesses had been examined so far and therefore, the Trial of the present case is not likely to be concluded soon. He further submits that the petitioner was convicted for a period of one month in another case registered against him under the NDPS Act bearing FIR No.130 dated 2.6.2019 under Sections 15/61/85 of the NDPS, Police Station Sirhind by the court of Judge, Special Court, Fatehgarh Sahib vide judgment of conviction and order of sentence dated 16.02.2021. In view of the judgment of the Hon'ble Supreme Court in the case of *Nitish Adhikary @ Bapan Versus 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 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, he was entitled to the grant of bail.

4. On the other hand, the learned State counsel 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, moreso as he was convict in another case bearing FIR No.130 dated 2.6.2019 under Sections 15/61/85 of the NDPS, Police Station Sirhind. He, however, concedes that the petitioner is in custody since 30.03.2021 and only 05 out of the 32 prosecution witnesses had been examined so far.

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 aforesaid 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. In the instant case, the petitioner is stated to be in custody since 30.03.2021 and only 05 out of the 32 prosecution witnesses had been examined so far. In this situation, the rigors 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 the right to a speedy trial and the case of the petitioner can be considered for the grant of bail even though he was convicted in one other case under the NDPS Act.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Nek Singh** son of Sh. Bant Singh is ordered to be released on bail subject to her 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.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.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

October 19, 2023

Vinay

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