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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-19120-2023 (O & M)****Date of decision: 25.04.2023**

Balbir Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Bhupinder K. Bhangu, Advocate,
for the petitioner.

Ms. Ramta K. Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.162 dated 06.08.2019 under Sections 21/22/29 of the NDPS Act registered at Police Station Kotwali Kapurthala, District Kapurthala.

2. The brief facts of the case are that while the police party was on patrolling duty, one car bearing Registration No.PB-08-AZ-3234 colour white was seen parked by the side of the road and two clean shaven young persons were standing near it. On seeing the police party, they got nervous and threw polythene envelopes on the side of the road into the grass and tried to slip away. They were apprehended and disclosed their names as Inderjit Singh @ Inder and Balbir Singh @ Kishan (petitioner).

The present petitioner is stated to have thrown a bag which was found to contain 260 grams of an intoxicating substance, subsequently,

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known as Alprazolam whereas the co-accused Inderjit Singh @ Inder is stated to have thrown a packet containing 100 grams of heroin.

Based on the aforementioned allegations, the instant FIR came to be registered.

3. The learned counsel for the petitioner contends that the petitioner is in custody since 16.04.2021. He is a first-time offender and none of the 16 prosecution witnesses had been examined so far. Therefore, the petitioner was entitled to the grant of bail in view of the judgment of the Hon'ble Supreme Court in '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 followed by this Court in the case of 'Balraj Singh versus State of Punjab (CRM-M-57386-2022 decided on 14.12.2022)'.

4. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband has been recovered from the petitioner. Therefore, the bar contained under Section 37 of the NDPS Act did not entitle him to the grant of bail. He, however, does not dispute the fact that the petitioner is in custody since 16.04.2021, is a first-time offender and none of 16 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 aforestated terms.

Pending application(s), if any, shall stand disposed of.”

This Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022** has followed the dictum laid down by the Hon'ble Supreme Court and granted bail to the petitioner therein after he had undergone total custody of 01 year and 06 months.

7. In the instant case, the petitioner is a first-time offender, in custody since 16.04.2021 and none of 16 prosecution witnesses have been examined so far. Therefore, the Trial of the case is not likely to be concluded anytime soon. In this view of the matter, the rigors of Section 37 of the NDPS Act can be relaxed to an extent in view of the salutary

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provisions under Article 21 of the Constitution of India and the case of the petitioner can be considered for the grant of concession of bail.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Balbir Singh is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present one

10. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- 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.

(JASJIT SINGH BEDI)
JUDGE

April 25, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No