

CRM-M-20242-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20242-2023 (O & M)
Date of decision: 01.05.2023

Gaurav Kumar

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Dhruvwinder Brar, 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.02 dated 07.01.2021 registered under Section 22 of the NDPS Act, 1985 registered at Police Station Aur, District SBS Nagar.

2. In brief, the prosecution case is that on 07.01.2021, the petitioner was apprehended by the police party when on seeing the police party, he had thrown away the polythene envelop being carried by him and had sat down. From the said envelop thrown away by the petitioner, 12 injections of Buprenorphine (2 ml each), 05 injections vials of Avil (10 ml each) and 25 strips of intoxicating tablets, total 375 intoxicating tablets of Alprazolam came to be recovered without any licence or permit.

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

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3. The learned counsel for the petitioner contends that as the petitioner is stated to throw away the envelope, he could not be said to be in conscious possession of the contraband. There had been non-compliance of Section 52-A and other mandatory provisions of the Act. No independent witness had been joined at the time of the alleged recovery. As the petitioner was a first-time offender, in custody since 07.01.2021 and only 02 of the 09 prosecution witnesses had been examined so far, he was entitled to the concession 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 a first-time offender, is in custody since 17.01.2021 and only 02 of the 09 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 FIR pertains to 07.01.2021. The petitioner is stated to be in custody since that date. Only 02 of the 09 prosecution witnesses have been examined so far and the petitioner is a first-time offender. 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 provisions

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speedy Trial 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-Gaurav Kumar 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.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.

(JASJIT SINGH BEDI)
JUDGE

May 01, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No