

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

CRM-M-21028-2023

Date of Decision:-03.05.2023

Sanjay @ Munna.

.....Petitioner.

Vs.

State of Harayana.

.....Respondent.

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

Present:- Mr. Rahul Deswal, Advocate for the Petitioner.

Mr. Neeraj Poswal, 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.497 dated 21.12.2020 under Sections 22(c) of NDPS Act and Section 27(a) NDPS Act, 1985 (added later on while submitting the Final report/Challan under Section 173 Cr.PC on 28.07.2021) registered at Police Station Sadar, Fatehabad, District Fatehabad.

2. The brief facts of the case are that while the police party was on patrolling duty and had set up a *naka* to check vehicles, a scooty was seen coming upon which two young boys were riding. On seeing the police party they tried to turn back. They were apprehended. On enquiry the driver of the scooty revealed his name as Sanjay @ Munna (petitioner) and the pillion rider disclosed his name as Gagan Kumar (since granted bail vide order dated 19.04.2023 passed in CRM-M-11712-2023 Annexure P-5). The search of the storage space of the scooty revealed 7000 tablets of Tramadol Hydrochloride 100 MG SR. Thereafter the instant FIR came to be

registered.

3. The Counsel for the petitioner contends that he has been falsely implicated in the present case. The scooty in question was registered in the name of Suman wife of Leela Krishan who is the mother of the co-accused Gagan (granted bail vide order dated 19.04.2023 passed in CRM-M-11712-2023 Annexure P-5). As the co-accused of the petitioner namely, Sanjay @ Kalu (since granted bail vide order dated 18.01.2022 in CRM-M-627-2022) and Gagan Kumar have been granted the concession of bail vide orders Annexure P-4 & P-5 respectively, the petitioner was entitled to the similar relief as he was in custody since 22.12.2020 and only 08 out of 18 prosecution witnesses had been examined so far. Reliance is placed on the judgment of 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*** which had been followed by this Court in ***Balraj Singh Vs. State of Punjab CRM-M-57386-2022 Decided on 14.12.2022***.

4. The Counsel for the State on the other hand contends that the petitioner is the main accused. Commercial quantity of contraband has been recovered from the scooty of which the petitioner was the driver. Therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He however, concedes that the petitioner is a first time offender, is in custody since 22.12.2020 only 08 out of 18 prosecution witnesses had been examined and two co-accused have been granted the concession of bail.

5. I have heard the learned counsel for the parties.

6. 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 decision 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.***

7. In the instant case, admittedly the petitioner is a first time offender, is in custody since 22.12.2020 and only 08 out of 18 prosecution witnesses have been examined so far. As the Trial of the present case is not likely to be concluded anytime soon, the provisions 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 a right to speedy Trial and the petitioner can be granted the concession of bail.

Thus without commenting on the merits of the case, the present

petition is allowed and the petitioner-**Sanjay @ Munna** son of Sh. Om Parkash Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. 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 one.

10. 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

May 03, 2023
Vinay

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