

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

CRM-M-21155-2023

Date of Decision:-03.05.2023

Jagdip Singh @ Jagdeep Singh @ Soni.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Sukhcharan Singh Gill, Advocate for the Petitioner.

Ms. Ramta K. Chaudhary, Deputy 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.0031 dated 02.04.2021 under Sections 21(c) of NDPS, Act registered at Police Station Mahilpur, District Hoshiarpur.

2. The brief facts of the case are that while the police party had set up a *nakabanadi*, secret information was received that Sukhwinder Singh @ Sukhi, Manpreet Singh @ Kala and Jagdeep Singh @ Soni (petitioner) were coming from Mahilpur to Phagwara in a Fortuner car bearing registration no.HR26-CD-0072 with a large quantity of Heroin which they had brought from Jammu and Kashmir. The said contraband had been hidden in a secret compartment in front of the radiator of their Fortuner car. If a *nakabandi* was set up they could be arrested.

Based on the said information a *nakabandi* was set up and when the Fortuner car came to the spot it was stopped. On asking the driver

revealed his name as Sukhwinder Singh @ Sukhi, the person on the conductor seat disclosed his name as Manpreet Singh @ Kala and the person who was sitting on the back seat disclosed his name as Jagdeep Singh @ Soni (petitioner). The recovery of 8Kgs of Heroin was effected from a compartment fitted in the front of the bonnet of the Fortuner Car. 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. Taking the prosecution case to be correct, the petitioner could not be said to be in conscious possession of the contraband which was admittedly fitted in a cavity in front of the radiator near the bumper. The said fact could be known to the owner of the vehicle namely Sukhwinder Singh @ Sukhi only. As the petitioner was a first time offender, in custody since 02.04.2021 and only 02 out of 23 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 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 commercial quantity of contraband has been recovered from the vehicle in which the petitioner was travelling. At this stage it cannot be held that the petitioner was not in conscious possession of the same. Even otherwise, 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 02.04.2021 and 02 out of 23 prosecution witnesses had been examined.

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, petitioner is a first time offender, is in custody since 02.04.2021 and only 02 out of 23 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.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Jagdip Singh @ Jagdeep Singh @ Soni** son of Sh. Naib 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.3,00,000/- 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