

2023:PHHC:112749

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

**CRM-M-21631-2023
Date of Decision: 24.08.2023**

Gurpreet Singh @ Bagga

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

1. Petitioner (Gurpreet Singh @ Bagga) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.4 dated 10.01.2022 (Annexure P-1), under Sections 22-C and 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Mulepuar, District Fatehgarh Sahib, Punjab.

2. The first petition filed under Section 439 of the Code of Criminal Procedure (CRM-M-7582-2022) by petitioner was withdrawn at that stage vide order dated 12.01.2023.

3. Upon issuance of notice, status report by way of affidavit of

Mr. Raj Kumar, P.P.S., Deputy Superintendent of Police, Sub Division Fatehgarh Sahib, District Fatehgarh Sahib, Punjab and custody certificate dated 24.08.2023 of the petitioner have been filed on behalf of State of Punjab, which are already on record.

4. Briefly, the aforesaid case FIR was registered on the basis of *ruqa* sent by Assistant Sub Inspector Jagroop Singh, wherein it was stated that on 10.01.2022, while he, along with Sepoy Harvir Singh and P.H.G. Lakhvir Singh, was present at the T-point, Bus Stop, Mulepur in private car for the purpose of patrolling and checking of suspected persons then around 8:00 P.M., a secret information was received by him that Gurpreet Singh @ Bagga (petitioner) son of Giyan Singh resident of Village Aloona, Police Station Sadar Rajpura, District Patiala, who is habitual of selling intoxicant tablets and syrup, was coming from Basantpura side to the Police Station Mulepur area, carrying heavy quantity of intoxicant tablets and syrup, and if *nakka* is placed on the way then huge quantity of intoxicant tablets and syrup can be recovered from him. Finding the information to be true and reliable, *ruqa* was prepared and sent to the Police Station for registration of the case.

5. As per the status report, *nakabandi* was placed near Charcoal Plant, Minor Canal Bridge of Village Pola by Sub Inspector Major Singh and other police officials. During *nakabandi*, one motorcycle (Hero Splendor) bearing registration No.PB-39-J-0908 was seen coming from Basantpura side and the same was signalled by the torch to stop, whereupon the motorcyclist got perplexed. Thereafter, on being asked, he told his name as Gurpreet Singh @ Bagga (petitioner) son of Gian Singh resident of Village Aloona, Police Station Sadar Rajpura, District Patiala. After following the due procedure, offer for search under Section 50 of the Narcotic Drugs and

Psychotropic Substances Act was made to the petitioner, whereupon he replied that he wants his search to be conducted in the presence of gazetted officer, accordingly non-consent memo of the petitioner was prepared, and the Deputy Superintendent of Police reached at the spot. Thereafter, during search, 420 intoxicant tablets make *Tramadol Hydrochloride* and 16 bottles of *Codeine Syrup* of 100 ml. each were recovered from the petitioner and the same were taken into police custody, along with the motorcycle of the petitioner, vide separate memos; and the site plan was also prepared. Thereafter, petitioner was arrested and during interrogation, the petitioner disclosed that the recovered tablets and bottles of syrup were purchased by him from one Talwinder Singh son of Balkar Singh resident of Mianpur, now at Ghuman Medical Hall, Bus Stand, Basantpura and on the basis of said disclosure statement, the said Talwinder Singh was nominated as an accused and Section 29 of the Narcotic Drugs and Psychotropic Substances Act was added in the case on 12.01.2022. Pursuant thereto, Talwinder Singh was also arrested on the same day, i.e. on 12.01.2022.

6. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case FIR (Annexure P-1). It is further submitted that the alleged recovery has been foisted upon the petitioner as he was not present at the spot and for that purpose, even his mobile tower location can be called for. Learned counsel submits that all the documents in question have been prepared at a later stage and no compliance of Sections 42 and 50 of the Narcotic Drugs and Psychotropic Substances Act was made. It is submitted that no independent witness was joined at the time of alleged recovery from the petitioner. Learned counsel for the petitioner further submits that even if the recovery allegedly effected from the petitioner is taken to be true then also the same

falls under the 'non-commercial quantity'.

7. Learned counsel for the petitioner submits that the Court of Special Judge, Fatehgarh Sahib vide order dated 31.01.2022 (Annexure P-2) has wrongly declined the regular bail application filed by the petitioner. It is further submitted that the earlier bail petition (CRM-M-7582-2022) filed by the petitioner before this Court was dismissed as withdrawn vide order dated 12.01.2023 (Annexure P-3).

8. Learned counsel for the petitioner contends that the petitioner is in custody since 10.01.2022, i.e. almost one year and eight months (as on 24.08.2023) in this case and no other case is pending against him. It is stated that investigation in the case is complete, challan stands presented on 21.05.2022 and even charges have been framed on 09.08.2022. Learned counsel for the petitioner submits that there are total eighteen prosecution witnesses in this case and only two witnesses have been examined so far, hence trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence as the recovery effected from petitioner falls in the category of 'commercial quantity', thus bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted. However, learned State counsel while referring to the custody certificate has submitted that there is no other case pending against the petitioner and he has undergone actual custody in this case for a period of one year, seven months and thirteen days

(as on 24.08.2023). It is also conceded by learned State counsel that challan in the case stands presented, charges have been framed and out of total eighteen prosecution witnesses, only two witnesses have been examined so far.

10. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

11. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly it is apposite to refer to the judgments rendered by Hon'ble Supreme Court.

12. The Hon'ble Supreme Court in ***Chitta Biswas @ Subhas v. State of West Bengal (Criminal Appeal No. 245 of 2020 dated 07.02.2020)*** observed as under:-

“ xxx

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.

With the aforesaid directions, the appeal stands allowed.”

13. The Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan v. State of West Bengal (Special Leave(Crl.) no. 5769 of 2022)*** held as under:-

“ xxxxx

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.”

14. In ***Shariful Islam @ Sarif v. State of West Bengal (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022)***, the Hon'ble Supreme Court held that:-

“ 1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of West Bengal and carefully perused the material available on record.

2. Taking into consideration the fact that the petitioner is reported to be in custody since 27.12.2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him.

4. The Special Leave Petition stands disposed of on the above terms.

5. Pending application filed in the matter also stands disposed of.”

15. In ***Karnail Singh v. State of Odisha (Criminal Appeal no. 2027 of 2022 dated 22.11.2022)***, Hon'ble Supreme Court held as under:-

“The appellant in the present case was only a Khalasi of the vehicle who did not run away while the others ran away

and have still not been apprehended. He has been in custody from 21.03.2021 i.e. more than a year and a half.

In view of the aforesaid facts and circumstances, we grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.”

16. The Hon'ble Supreme Court in ***Karim Adaldar v. State of West Bengal (Special Leave to Appeal (Crl.) No. 8653 of 2022)*** held that:-

“Having heard learned counsel appearing for the parties and keeping in view the period of custody already undergone by the petitioner, and there being no likelihood of completion of trial in the near future, but without expressing any views on the merits of the case, the petitioner is ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of learned Additional Sessions Judge, 6th Court, Barasat, District – North 24 Parganas, West Bengal.”

17. Further, Hon'ble Supreme Court vide judgment dated 25.1.2023 arising out of ***SLP No.6690 of 2022***, titled as ***“Dheeraj Kumar Shukla Vs. State of Uttar Pradesh”*** has granted bail in a case registered under the Narcotic Drugs and Psychotropic Substances Act, where the accused alongwith co-accused was found in possession of 'commercial' quantity of 'Ganja' and had been behind bars since the last two and a half years while observing that in the absence of any criminal antecedents, the conditions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act could be dispensed with at that stage, particularly when there was delay in conclusion of trial.

18. Recently, Hon'ble Supreme Court in judgment dated 04.05.2023 passed in ***Special Leave Appeal (Crl.) No(s).3221 of 2023*** titled as ***“Hasanujjaman and others Vs. The State of West Bengal”***, 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.

- x - x - ”

19. Concededly the alleged recovery in this case falls under the category of commercial quantity and bar of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted, however, while dealing with Section 37 *ibid*, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence.

20. The petitioner is in custody for a period of one year, seven months and thirteen days (as on 24.08.2023). Investigation in the case is complete, challan stands presented on 21.05.2022 and even charges have been framed on 09.08.2022. As per status report, out of total eighteen prosecution witnesses, only two witnesses have been examined, by now. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude. Further, co-accused Talwinder Singh has been granted regular bail by a co-ordinate Bench of this Court vide order dated 06.04.2022 passed in CRM-M-7288-2022.

21. In the facts and circumstances of the present case and on an assessment of material on record especially, the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, I am of the *prime facie* view at this stage that the petitioner may not have committed the alleged offence and he is unlikely to commit an offence under the Narcotic Drugs and Psychotropic Substances Act, while on bail.

22. In view of the above discussion, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The

petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

23. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

24. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

25. The petition is accordingly disposed of.

26. All pending application(s), if any, shall also stand closed.

24.08.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No