

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-23523-2022 (O/M)

Date of decision : 14.7.2023

Jyoti Rani

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Preetinder Singh Dhaliwal, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, AAG Punjab.

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HARSH BUNGER, J.

1. Petitioner (Jyoti Rani) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No. 7 dated 29.01.2022, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), registered at Police Station Tapa Mandi, District Barnala.
2. Status report by way of affidavit dated 23.03.2023 of Mr. Ravinder Singh, P.P.S., Deputy Superintendent of Police, Sub Division Tapa, District Barnala, has been filed on behalf of State of Punjab, which is already on record.
3. Custody certificate dated 09.05.2023 of the petitioner has already been filed by learned State counsel, which is already on record.
4. Briefly, on 29.01.2022, ASI Satwinder Singh of Special Task Force, Patiala alongwith other police officials was present near Dhilwan Phatak in the area of Tapa for patrolling and checking of suspected persons. Then, at

about 3.30 pm, a secret information was received that Karnail Singh alias Chuchu alias Badra and Jyoti Rani alias Jyoti wife of Balwinder Singh alias Gaggi (petitioner herein) are habitual of selling intoxicant powder (chitta) and intoxicant tablets. It was informed that on the said day, the aforesaid persons were roaming in the jurisdiction of Police Station Tapa in the search of customers and if a raid is conducted then they can be apprehended with heavy quantity of intoxicant powder (chitta) and intoxicant tablets. Finding the information reliable, a ruqa was prepared and same was sent to police station for registration of FIR against Karnail Singh alias Chuchu and Jyoti Rani alias Jyoti (petitioner herein). ASI Satwinder Singh prepared report under Section 42 of the NDPS Act at the spot and sent the same to the senior officers. He also requested the SHO of Police Station Tapa to depute some competent investigating officer for further investigation, whereupon Lady Sub Inspector Renu alongwith police party reached near ASI Satwinder Singh who apprised the facts to Lady Sub Inspector Renu and left the spot. Thereafter, Lady Sub Inspector Renu alongwith police party conducted raid at the house of Jyoti Rani alias Jyoti (petitioner herein) where she was found present and upon seeing the police party, she got panicked and started to slip away, but she was apprehended. Thereafter, an offer of search was given to petitioner and she was also apprised of her legal right to get her house searched from a Gazetted Officer or from a Magistrate or in their presence, whereupon Jyoti Rani alias Jyoti opted for getting her house searched from a Gazetted Officer. Accordingly, Ravinder Singh Randhawa, PPS, DSP, Investigation, Barnala was called at the spot, who also gave the option of search from some other Gazetted Officer or from Magistrate to Jyoti Rani alias Jyoti, however, she reposed confidence in the DSP. During the search, a black

envelope kept near the green water tank in the bathroom of the house was recovered wherein strips of intoxicant tablets (marka Tramadol Chelcidol 100 SR) were found. On counting the same, it came out to be 90 strips of intoxicant tablets, each strip containing 10 tablets of Tramadol Hydrochloride Chelcidol 100 SR. Accordingly, total 900 intoxicant tablets, Batch No. T1222001 MFG Jan 2022, EXP Dec 2023 and 181 grams white intoxicant powder (chitta) were recovered.

5. Learned counsel for the petitioner submits that the petitioner is a lady of about 23 years of age, who has been falsely implicated in the present case. It is submitted that the petitioner is having two small minor children, who require her care and the petitioner has been in custody since 29.01.2022. It is contended that the instant case has been registered on the basis of a secret information and the provisions of Section 42 of the NDPS Act have not been complied with. It is further contended that no videography and photographs were taken when the alleged recovery was effected and neither any independent witness was joined at the time of alleged recovery. It is submitted that the investigation in the case is complete, challan stands presented and the charges were framed on 18.11.2022 and out of total 16 prosecution witnesses, no witness has been examined. Thus, the trial is likely to take time to conclude and no useful purpose would be served by keeping petitioner behind the bars for indefinite period. It is submitted that the petitioner is not involved in any other case FIR. It is next submitted that the other co-accused of the petitioner, namely, Karnail Singh alias Chuchu, who was named in the secret information as well as in the FIR, was granted anticipatory bail by this Court vide order dated 07.09.2022 passed in CRM-M-8486-2022, a copy whereof has been

handed over in the Court which is taken on record subject to all just exceptions. Accordingly, prayer for granted of regular bail has been made.

6. Per contra, learned State counsel has reiterated the contents of the status report and submitted that huge quantity of intoxicant substance has been recovered in this case. He submits that RTFSL Report dated 28.4.2022 has been received in this case, according to which Tamadol Hydrochloride was found in the parcels sent for examination and total weight of 900 tablets comes to 409.248 grams, which is more than 250 grams. Thus, the recovery of intoxicant tablets in this case comes under the category of 'commercial' quantity, accordingly, bar under Section 37 of NDPS Act is attracted. Therefore, it is prayed that the petition be dismissed. However, learned State counsel has not disputed the fact that the petitioner has been in custody since 29.01.2022 and also that the charges have been framed in this case and trial is going on and out of total 16 prosecution witnesses, no prosecution witness has been examined. It is also not disputed that there is no other case against the petitioner.

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

8. 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.

9. The Hon'ble Supreme Court in *Chitta Biswas alias Subhas v. State of West Bengal* (Criminal Appeal No. 245 of 2020 dated 7.2.2020) 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 21.7.2018 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.”

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

“ xxxx

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 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 1 year and 7 months as on 9.6.2022. 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.”

11. In *Shariful Islam alias Sarif v. State of West Bengal* (Special Leave to Appeal (Crl) 4173 of 2020 dated 4.8.2022), 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.”

12. 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 21.3.2021 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.”

13. The Hon'ble Supreme Court in *Karim Adaladar 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.”

14. Coming to the case in hand, the petitioner is a young lady of about 23 years of age, who is stated to be having 2 minor children requiring her care. The petitioner has been in custody since 29.01.2022 and as per the custody certificate, the petitioner has undergone total custody of 1 year, 3 months, 5 days (as on 09.05.2023) and there is no other case against the petitioner. The investigation in this case is complete, charges have been framed and the trial is going on. Out of 16 prosecution witnesses, no-one has been examined. Thus, the trial is likely to take some time to conclude. Moreover, the co-accused of the petitioner, namely, Karnail Singh alias Chuchu has already been granted

anticipatory bail by a coordinate bench of this Court, vide order dated 7.9.2022 passed in CRM-M-8486-2022.

15. Although, 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 of the Narcotic Drugs and Psychotropic Substances Act, 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. In the facts of the present case and on an assessment of material on record, I am of the prima facie view at this stage that the petitioner may not have committed the alleged offence. Further, considering the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, there is nothing on record to suggest that she is likely to commit an offence under the Narcotic Drugs and Psychotropic Substances Act, while on bail.

16. Keeping in view the aforementioned circumstances and the legal position as indicated above, present petition is allowed and the petitioner is ordered to be released on regular bail subject to her 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 her address at which she 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 her telephone number to the concerned Station House Officer. She would also furnish her

undertaking to the effect that she will not indulge in any illegal activity.

17. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs. 50,000/- 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.

18. 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.

19. The petition is accordingly disposed of.

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

(HARSH BUNGER)
JUDGE

14.7.2023.
sjks

Whether speaking/reasoned order : Yes / No

Whether Reportable : Yes / No