

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

285

CRM-M-22953-2023.

Date of Decision: 30.11.2023

Azru

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Baljeet Beniwal, Advocate for petitioner.

Mr. Saurabh Girdhar, Assistant Advocate General, Haryana.

Lalit Batra, J.

This third petition under Section 439 Cr.P.C has been moved by petitioner-Azru for grant of regular bail in case FIR No.164 dated 15.06.2021 under Sections 21(c) and 22(a) of NDPS Act, registered at Police Station Hathin, District Palwal.

2. Learned counsel for petitioner *inter alia* contends that allegedly petitioner was found apprehended while having possession of 20 bottles x 100 MLs each Codeine Phosphate, 20 tablets of Alprax and 28 capsules of Tramadol. The mandatory provisions of Section 50 of NDPS Act were not complied with by the Investigating Agency. Petitioner is not involved in any other case. He is first time offender, stated to be in custody since 15.06.2021 and only seven (07) witnesses out of fifteen (15) prosecution witnesses have been examined so far and the trial of the present case is not likely to be concluded anytime soon and therefore, he is entitled to the concession of bail

in view of the judgment of Hon'ble Supreme Court in the case of Nitish Adhikary @ Bapan vs. 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 Hasanujjaman & others vs. The State of West Bengal, SLP (Crl.) No. (s).3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023.

3. Learned State counsel while opposing instant petition has vehemently argued that keeping in view seriousness of offence, he does not deserve the concession of bail.

4. I have heard learned counsel for the parties and have carefully gone through the contents of petition, documents placed on record as well as custody certificate of petitioner.

5. 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 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.”

6. In **Hasanujjaman & others** vs. **The State of West Bengal**, SLP (Crl.) No.(s).3221/2023, decided on 04.05.2023, 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.*

6. *Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.*

7. *The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.*

8. *The Special Leave Petition stands disposed of in the above terms.*

9. *As a result, pending interlocutory application also stands disposed of.”*

(emphasis supplied)

7. Petitioner is stated to be first time offender with no other case registered against him; rigors 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 the right to a speedy trial, the case of petitioner can be considered for grant of bail.

8. At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that petitioner is stated to be in custody since 15.06.2021 and only seven (07) witnesses out of fifteen (15) prosecution witnesses have been examined so far and since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further.

9. In view of above, instant petition for grant of regular bail moved by petitioner-Azru is allowed and he is ordered to be released on bail on his furnishing personal bond and surety bond to the satisfaction of Trial Court/ Chief Judicial Magistrate/Duty Magistrate, Palwal, as the case may be.

(LALIT BATRA)
JUDGE

30.11.2023
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No