

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

CRM-M-22608-2023

Date of decision : 24.08.2023

Rajinder Singh @ Baz

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Monty Goyal, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.141 dated 30.07.2021 registered for the offences punishable under Sections 15, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Sahnewal, District Ludhiana.

2. Custody Certificate has been produced today in Court. The same is taken on record.

3. As per the contents of the FIR, the case of the prosecution is :

“today I ASI alongwith ASI Ranjit Singh No. 949/Ludhiana, HC Wazir Singh No.90/Ldh, Constable Sharanjit Singh No.3883/ Ludhiana, were present on Govt. Vehicle Mark Scorpio bearing registration No. PB65AV-4861 which was driven by Constable Mandeep Singh 3780/LDH. we were having laptop, laser printer and were present in order to find bad element and laid down a check post near Gurudwara Attarsar

Sahib, National Highway, Ludhiana, side then I ASI received a secret information in which secret informer came to me and informed me that Rajinder Singh @ Baz S/o Daler Singh resident of Vill. Kaneja, Police Station Meharban, Distt.Ludhiana, and Raju Sagar S/o Sardar Singh resident of Vill. Tilakpura, Police Station Sitapur, U.P. presently residing at Nasran, Distt. Hoshiarpur, who are habitual of selling poppy husk who today also are coming. On their truck bearing registration no.HR-37D-3456 and are carrying huge quantity of poppy husk, coming towards Ludhiana, in order to supply the same, if check post is laid immediately then Rajinder Singh & Baz and Raju Sagar, can be caught red handed alongwith poppy husk and secret informer gave me the information which is correct and relevant and Rakinder singh @ Baz and Raju Sagar have committed crime U/s 15, 61,85 of N. D. P.S. Act by keeping poppy husk alongwith them and ruqa is being written against Rajinder Singh Baz and Raju Sagar and same is sent through constable Sharanjit Singh No.3883/Ludhiana and after registration of the FIR number of the FIR may kindly be informed and control room is being informed and I am present on check post alongwith other employee and according to the guidelines of the supreme court second I.O. is being called on the spot opposite Gurdwara Sahib National Highway Ludhiana side at 2:30 PM Sd/-”

4. Counsel for the petitioner would submit that the petitioner is behind the bars since 2nd of August, 2021. Charges were framed on 2nd of December, 2021. However till date only 1 out of 15 cited witnesses has been examined and one witness has been given up. Counsel has produced *zimini* orders from 2nd of December, 2021 till 28th of July, 2023 which are an ode to the conduct of the prosecution in delaying the trial. He further relies

upon the law laid down by Division Bench of this Court in **Bhupender Singh vs. Narcotic Control Bureau, (2022) 2 RCR (Criminal) 706** to contend that the right to speedy trial having been recognized under Section 36 of the NDPS Act. Wherever the said right is defeated rigors as contained in Section 37 of the Act have to pave way for the right to liberty vested in the petitioner.

5. Learned counsel for the petitioner relies upon order passed by Apex Court in the case of **Rabi Prakash Vs. The State of Odisha** passed in **Special Leave to Appeal (Crl.) No(s). 4169 of 2023** decided on 13.07.2023 wherein it has been held as under :-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

6. Earlier to **Rabi Prakash's case** (supra) also Apex Court has held that the prolonged incarceration has to be considered de hors bar contained under Section 37 of the NDPS Act. The Supreme Court in order dated 22.08.2022 passed by the Supreme Court in **Special**

Leave to Appeal (Crl.) No.5530-2022 titled as "**Mohammad Salman Hanif Shaikh Vs. The State of Gujarat**, had held as under:

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

7. The above-said case was also a case under the NDPS Act, 1985 and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Supreme Court had observed that the concession of bail was granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

8. Supreme Court in order dated 07.02.2020 passed by the Hon'ble Supreme Court in **Criminal Appeal No.245/2020** titled as "**Chitta Biswas Alias Subhas vs. The State of West Bengal**" was pleased to grant concession of bail to the petitioner (therein) in a case where the custody

was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as under: -

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

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."

9. In order dated 05.08.2022 passed by the Supreme Court in
Criminal Appeal No.1169 of 2022 titled as "Gopal Krishna Patra @

Gopalrusma vs. Union of India," the Supreme Court was pleased to observe as under: -

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.

We therefore, direct that:

- (a) The appellant shall be produced before the Trial Court within five days from today.
- (b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.
- (c) The appellant shall not in any manner misuse his liberty.
- (d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

10. In order dated 01.08.2022 passed by the Supreme Court in Special Leave to Appeal (Crl.) No.5769/2022 titled as "**Nitish Adhikary @**

Bapan Vs. The State of West Bengal" Supreme Court has observed 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 aforestated terms.

Pending application(s), if any, shall stand disposed of."

11. The aforesaid factual assertions made by counsel for the petitioner based on record are not disputed by counsel representing the State.

12. I have heard counsel for the parties and have gone through records of the case. The incarceration suffered by the petitioner is not

disputed and it is also admitted that he has no criminal antecedents. So far as the proceedings of trial are concerned, the same are evident from the following *zimini* orders passed by the Trial Court from the date the Charges were framed i.e. 2nd of December, 2021 onwards :

“xxxx

Copies of challan supplied to the accused free of cost as required u/s 207 Cr.P.C. Heard. From the perusal of the report under Section 173 Cr.PC and appended documents, a prima facie case for the offence punishable under Sections 15 NDPS Act is made out against the accused. Let charge for the offence be framed against the accused.

xxxx

Charge framed, which has been read over and explained to the accused. The accused pleaded not guilty and claimed trial.

Now witnesses mentioned at serial no.1 to 3 be summoned for 27.1.2022. Long date is being granted in view of impending winter vacation and large number of custody cases pending in the court.

xxxx

In view of the present surge in COVID-19 positive cases and spread Ld.District and Sessions Judge, Ludhiana vide endorsement No.60/G dated 5.1.2022 has directed that hearing of all the cases shall be held through VC only. The personal appearance of appellant/accused on bail is to be exempted and further the said order has been extended up-till 31.1.2022 vide endorsement No.222/G dated 14.1.2022 and it has further been directed that court shall refrain from passing adverse orders in case of non appearance in a case because of the COVID Spread Situation.

As such in the interest of justice case is adjourned to 17.03.2022 for production warrant of accused. Summons received back unserved. Now PWS mentioned at Sr.No.1 to 3 be

summoned for the said date.

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No PW is present. Summons received back unserved. Now PWS be summoned for 10.5.2022 as per previous order.

xxxx

Case received by transfer. It be registered. No PW is present. Summons issued to PWs not received back. On request, the case is adjourned to 25.5.2022 for prosecutuion evidence and unexamined Pws, as per previous order, be agains summoned for that date

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File put up before me being Duty Judge as the learned Presiding Officer is on leave today.

No PW is present today. Summons issued to PWs not received back. On request, the case is adjourned to 4.6.2022 for prosecution evidence and unexamined PWs, as per previous order, be again summoned for that date.

xxxx

File put up before me being Duty Judge as the learned Presiding Officer is on summer vacations.

Case received by transfer. It be registered. Accused Raju Sagar in custody and not produced by the Jail authorities. His production warrants now be issued for 6.7.2022.

No PW is present. Entire unexamined P.Ws now be summoned for 6.7.2022. Long date is given due to ensuing summer vacations.

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No PW is present. Summons issued to PW ASI Ranjit Singh and ASI Sadhu Singh received back unserved. They be again summoned for 27.7.2022.

xxxx

No PW is present. Summons issued to PWs received back unserved. On request, the case is adjourned to 6.9.2022 for prosecution evidence and unexamined PWs, as per previous order, be again summoned for that date. Accused have not been

produced by the jail authorities. Their production warrants be issued for the fixed date.

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No PW is present. Summon of pws ASI Ranjit Singh and ASI Sadhu Singh be issued for 20.9.2022. PWs listed at sr. no.3&5 be also summoned for the said date fixed. Accused Rajinder Singh and Raju Sagar be again produced on the date fixed.

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No PW is present. Summon of PWs HC Wazir Singh, ASI Sadhu Singh and ASI Ranjit Singh received back unserved. Fresh summon of said witnesses be issued for 11.10.2022. Accused Rajinder Singh and Raju Sagar be again produced on the date fixed.

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Today Sh. G.S. Bal, Advocate appeared and filed power of attorney on behalf of accused. No

PW is present. Summon of PW HC Wazir Singh received back duly served, but he has not come present. So, he be summoned throughailable warrants in the sum of Rs.5000/- with one surety in the like amount. Summon of PWs ASI Sadhu Singh and ASI Ranjit Singh received back unserved. Fresh summon of said witnesses be issued for 02.11.2022. Accused Rajinder Singh and Raju Sagar be again produced on the date fixed.

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No PW is present.ailable warrants of PW HC Wazir Singh not received back. Freshailable warrants of the said witness be issued for 14.12.2022. Summon of PWs ASI Sadhu Singh and ASI Ranjit Singh not received back. Fresh summon of said witnesses be issued for the said date fixed. Accused Rajinder Singh and Raju Sagar be again produced on the date fixed.

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No PW is present.ailable warrants of PW HC Wazir

Singh received back served but he has sent a request that due to law and order duty he has not come and requested for an adjournment. Let fresh bailable warrants of the said witness be issued for 09.1.2023. Summon of PW ASI Ranjit Singh received back duly served, but he has not come present. So, he be summoned through bailable warrants in the sum of Rs.5000/- with one surety in the like amount. Summon of PW ASI Sadhu Singh received back unserved. Fresh summon of the said witness be issued for the said date fixed. Accused Rajinder Singh and Raju Sagar not produced. Let production warrants of accused be issued for the said date fixed.

No PW is present. Bailable warrants of PW HC Wazir Singh not received back. Fresh bailable warrants of the said witness be issued for 24.1.2023. Summon of PWs ASI Sadhu Singh and ASI Ranjit Singh not received back. Fresh summon of said witnesses be issued for the said date fixed. Accused Rajinder Singh and Raju Sagar be again produced on the date fixed.

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No PW is present. Bailable warrants of PW HC Wazir Singh and ASI Ranjit Singh received back unserved. Fresh bailable warrants of the said witnesses be issued for 04.2.2023. Summon of PW ASI Sadhu Singh received back unserved. Fresh summon of the said witness be issued for the said date fixed. Accused Rajinder Singh and Raju Sagar be again produced on the said date fixed.

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PW1 ASI Sadhu Singh is present and examined in chief. His cross examination is deferred as counsel for accused is not available. PW ASI Sabhu Singh is bound down for 21.2.2023. No other PW is present. Bailable warrants of PW HC Wazir Singh and ASI Ranjit Singh not received back. Fresh bailable warrants of the said witnesses be issued for 21.2.2023. Accused Rajinder Singh and Raju Sagar be again produced on the said date fixed.

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No PW is present. PW ASI Sadhu Singh was bound down but he has not come present. PW ASI Sadhu Singh be summoned by way of bailable warrants in the sum of Rs.5000/- with one surety in the like amount for 13.3.2023. Bailable warrants of PW HC Wazir Singh and ASI Ranjit Singh received back unserved. Fresh bailable warrants of the said witnesses be issued for 13.3.2023. Accused Rajinder Singh and Raju Sagar be again produced on the said date fixed.

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Cross-examination of PW1 ASI Sandhu Singh recorded completely. Ld. Addl.PP for the State has given up PW-ASI Ranjeet Singh being unnecessary vide a separate statement. No other PW is present or served. All unexamined PWs be examined as per previous order for 05.4.2023. Accused Rajinder Singh and Raju Sagar be again produced for the date fixed.

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PW HC Wazir Singh is present but could not be examined as court time is over. PW HC Wazir Singh is bound down for 19.4.2023. No other PW is present. Remaining unexamined pws be also summoned for the said date. Accused Rajinder Singh and Raju Sagar be again produced on the said date fixed.

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No PW is present. ASI Gurdeep Sing has sent a request that PW HC Wazir Singh had gone to Hon'ble High Court and requested for an adjournment. Remaining unexamined pws be also summoned for 11.5.2023. Accused Rajinder Singh be again produced on the said date. Accused Raju Sagar not produced. Let production warrants of accused be issued for the said date fixed.

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No PW is present. Now pws listed at sr. no.3, 5 & 15 be summoned for 29.5.2023. Accused Rajinder Singh and Raju Sagar not produced. Let production warrants of accused be issued for the date fixed.

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PW2 HC Wazir Singh is present and examined in chief. His cross examination is deferred as counsel for accused is not available. PW HC Wazir Singh is bound down for 05.7.2023. PW SI Puran Singh is present but could not be examined. PW SI Puran Singh is bound down for 05.7.2023. Now remaining unexamined pws be summoned for the date fixed. Accused Rajinder Singh and Raju Sagar have been produced. They be again produced on the date fixed.

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No PW is present. PWs HC Wazir Singh and SI Puran Singh were bound down but they have not come present. PWs HC Wazir Singh and SI Puran Singh be summoned by way of bailable warrants in the sum of Rs.5000/- each with one surety in the like amount for 20.7.2023. Remaining unexamined pws be summoned for the date fixed. Accused Rajinder Singh and Raju Sagar not produced by the jail authorities. Let production warrants of accused be issued for the fixed date.

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PW2 HC Wazir Singh is present and partly cross examined. Further cross examination is deferred on request of counsel for accused. PW HC Wazir Singh is bound down for 28.7.2023. PW3 Retired Inspector Puran Singh is present and partly examined in chief. Further chief deferred for want of case property i.e. truck. Notice to sapurdar to produce the case property on the next date of hearing. PW Retired Inspector Puran Singh is bound down for the date fixed. No other PW is present. Now remaining unexamined pws be summoned for the date fixed. Accused Rajinder Singh has been produced. He be again produced on the fixed date. Accused Raju Sagar not produced by the jail authorities. Let production warrants of accused Raju Sagar at Hoshiarpur Jail be issued for the fixed date.

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No PW is present. PW HC Wazir Singh was bound down but he has not come present. PW HC Wazir Singh be summoned

by way ofailable warrants in the sum of Rs.5000/with one surety in the like amount 19.8.2023. Notice to sapurdar to produce the case property on the next date of hearing. Accused Rajinder Singh has been produced by the jail authorities. He be again produced on the fixed date. Accused Raju Sagar not produced by the jail authorities. Let production warrants of accused be issued for the fixed date.”

13. Having heard counsel for the parties and after going through records of the case without commenting on the merits, this Court finds that keeping in view incarceration suffered by the petitioner and the fact that only 1 out of 15 cited witnesses has been examined till date, present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone

number without permission of the trial Court.
(vii) The petitioner shall not in any manner try to delay
the trial.

14. In case of breach of any of the aforesaid conditions and those
which may be imposed by the Trial Court, the prosecution shall be at liberty
to move cancellation of bail of the petitioner.

15. Inertness of the prosecution and helplessness of the Court
remain unexplained. Trial Court is directed to attach salary of the official
witnesses who failed to depose despite service after taking their details
from the record.

16. Attachment shall remain in force till the official witnesses
appear and depose before the Trial Court.

August 24, 2023
Dpr (Pankaj Jain)
Judge

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