

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

211

CRM-M-27404-2021

Date of decision : 21.04.2023

Harpal Singh @ Bhalu

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Satwant Mehta, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.22 dated 03.03.2021 registered under Sections 21 and 27A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Bhikhiwind, District Tarn Taran.

2. Brief facts of the case are that on 03.03.2021 when the police party headed by ASI Jassa Singh were on patrolling duty, on suspicion, they have apprehended the petitioner and on search 260 grams of heroin was recovered from him.

3. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The mandatory provisions of NDPS Act were not complied with by the

police. Even otherwise the quantity of contraband recovered from the petitioner i.e. 260 grams of heroin is marginally higher than the commercial quantity of 250 grams. While weighing the alleged contraband, the weight of the polythene bag was not excluded. The petitioner is not involved in any other case under the NDPS Act. The petitioner is in custody since 03.03.2021. Challan has been presented and charges have already been framed. However, out of total 13 prosecution witnesses, only 01 has been examined so far and the trial is moving at snail's pace which is not likely to be concluded in near future. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be released on regular bail.

4. On the other hand learned State counsel has opposed the present petition on the ground that the petitioner has been apprehended for having kept in his possession 260 grams of heroin without any licence or permit which falls under the category of commercial quantity. However, he conceded the fact that the petitioner is not involved in any other case under the NDPS Act.

5. Custody certificate dated 19.04.2023 has been filed by learned State counsel in the Court today which is taken on record. As per the custody certificate, the petitioner is in custody for last more than 02 years.

6. Having heard learned counsel for the parties, I found that the petitioner has already suffered prolonged incarceration of more than 02 years. In the trial, only 01 witness has been examined out of 13 cited

witnesses.

7. In the case of ***Shariful Islam @ Sarif Vs. The State of West Bengal, Special Leave to Appeal (Crl.) No.4173 of 2022 decided on 04.08.2022*** Hon'ble Apex Court found that an under trial having suffered incarceration over 1 year and 6 months is entitled for grant of regular bail holding that :-

"2. Taking into consideration the fact that the petitioner is reported to be in custody since 27-1-2021 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."

8. Similarly, Hon'ble Supreme Court in ***Gopal Krishna Patra @ Gopalrusma Vs. Union of India, Criminal Appeal No.1169 of 2022 decided on 05.08.2022*** ordered as under:-

"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."

9. The Hon'ble Supreme Court in ***Chitta Biswas @ Subhas' Vs. The State of West Bengal, Criminal Appeal No(s).245 of 2020***

decided on 07.02.2020 ordered as under :-

"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."

10. The Hon'ble Supreme Court in another judgment passed in ***Mohammad Salman Hanif Vs. The State of Gujrat, Special Leave to Appeal (Crl.) No(s).5530 of 2022 decided on 22.08.2022*** ordered as under :-

"The petitioner seeks enlargement on regular bail in the FIR being C.R.No.NDPS/11192015200884/2020 case registered at Changodar Police Station, District Ahmedabad (Rural) for the offences punishable under Sections 8(c), 21(c) and 29 of the NDPS Act.

We have heard learned counsels for the parties and are of the considered opinion that the questions like whether the contraband recovered from the petitioner is of 'commercial quantity or whether codein phosphate is a manufactured drug or a narcotic substance, need not be go into at this stage.

As per the allegations, 358 bottles of cough syrup containing codein of 'commercial quantity' was recovered from the petitioner.

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."

11. Division Bench of this Court in ***Bhupender Singh Vs. Narcotic Control Bureau : (2022) 2 RCR (Criminal) 706*** after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors enumerated under Section 37 of the Act held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India de hors the stringent provisions of Section 37 of the Act.

12. The same principle has been followed by the Supreme Court in the afore-referred cases granting concession of regular bail to the undertrials merely on the basis of long incarceration that they have suffered owing to delay in trial.

13. Keeping in view the facts and circumstances of the case, custody period of the petitioner, the contraband recovered is marginally above than the commercial quantity, the petitioner is not involved in any other case under the NDPS Act and also the fact that the trial is likely to take long time but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

14. Accordingly, the present petition is allowed and petitioner-

Harpal Singh @ Bhalu is ordered to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

15. However, State will be at liberty to file application for cancellation of petitioner's bail, if he is found involved in any other case under the NDPS Act during the period of bail.

21.04.2023

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(ASHOK KUMAR VERMA)
JUDGE

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