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(234) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-24661-2023
Date of Decision: 03.07.2023

RAJA RAM @ RAJE RAM

... Petitioner

Versus

UNION OF INDIA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Surinder Singh Duhan, Advocate
for the petitioner.

Ms. Gurmeet Kaur Gill, Sr. Panel Counsel
for UoI (NCB).

JASJIT SINGH BEDI, J.

This 2nd petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing NCB Crime No.69 dated 17.12.2020 registered under Sections 8, 20 and 29 of NDPS Act, 1985 at Police Station NCB, Chandigarh.

2. The present case bearing NCB Crime No.69 dated 17.12.2020 under Sections 8, 20 and 29 of NDPS Act, 1985 came to be registered at Police Station NCB, Chandigarh with the allegations that Intelligence Officer Rajneesh received information that the petitioner was travelling to Kurukshetra with Charas in a bus of which he was the conductor. If the said bus was intercepted, the recovery could be effected. Based on the information, the bus was intercepted and the driver of the bus was asked about the conductor Raja Ram @ Raje Ram (petitioner). On being confronted, Raja Ram @ Raje Ram disclosed that he was carrying 2 kgs Charas packed in

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two packets and kept in his black bag wrapped in a newspaper. The bag was found, the contraband was removed and was found to contain Charas.

Pursuant to the recovery, the statement of the petitioner was recorded under Section 67 of the NDPS Act and he was arrested. He disclosed that he had taken the delivery of the contraband at Kizrabad from Salman son of Saleem and had also paid a sum of Rs.60,000/- to Salman. Thereafter, the house of Saleem was searched and notices were issued to Saleem son of Hanif and Salman son of Saleem to join investigation. Subsequent notices were also issued to Saleem and Salman. On an analysis of the call details of the petitioner, it was found that Saleem and the petitioner were in contact with each other. Subsequently, Salman was joined in the investigation and his statement was recorded under Section 67 of the NDPS Act. Notices were also issued to his wife Begum Jahan. The statements of independent witnesses Sudesh Kumar and Jai Pal, conductor and bus driver respectively were also recorded.

Thereafter, the instant complaint under Sections 8, 20 and 29 of NDPS Act, 1985 came to be filed against the petitioner and Saleem (absconder) for the illegal possession and transportation of Charas.

3. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. There has been non-compliance of the mandatory provisions of the Act regarding search and seizure. The petitioner could not be said to be in conscious possession of the recovered contraband as the same was recovered from the bus and not from his person. As he was in custody since 17.12.2020, he was entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in case of Nitish Adhikary @

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Bapan Versus 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 followed by this Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022.**

4. A reply dated 30.06.2023 has been filed on behalf of the Union of India by the Senior Panel counsel for the Union of India. The same is taken on record. She contends that as commercial quantity of contraband has been recovered from the petitioner, therefore, the bar contained under Section 37 of the NDPS Act did not entitle him to the grant of bail moreso, when some of the material prosecution witnesses have been examined and have supported the prosecution case. She, however, fairly concedes that the petitioner was a first-time offender, in custody since 17.12.2020 and 06 prosecution witnesses remain to be examined.

5. I have heard the learned counsel for the parties.

6. The 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 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 aforestated terms.

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

This Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022** has followed the dictum laid down by the Hon'ble Supreme Court and granted bail to the petitioner therein after he had undergone total custody of 01 year and 06 months.

7. In the instant case, the petitioner is stated to be in custody since 17.12.2020 and 06 prosecution witnesses remain to be examined. He is also a first-time offender with no other case registered against him. In this situation, the 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 and the case of the petitioner can be considered for the grant of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Raja Ram @ Raje Ram son of Chota

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Ram is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

03.07.2023

JITESH

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