

CRM-M-25802-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25802-2023

Date of decision: 06.09.2023

PUSHPINDER KUMAR

...Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Anuj Sharma, Advocate,
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

HARNARESH SINGH GILL, J. (ORAL)

1. Through this petition, the petitioner seeks regular bail in case FIR No.55 dated 17.03.2021, registered at Police Station Mandi Gobindgarh, District Fatehgarh Sahib, under Sections 18(c) and 25 NDPS Act.
2. As per the prosecution version, recovery of 6 kg. opium was effected from the petitioner, who alongwith the co-accused was going on a scooty.
3. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that though extent of contraband allegedly recovered in the present case, falls under commercial quantity, yet the fact remains that the petitioner has been in custody since 22.03.2021 and that out of 14 prosecution witnesses, only 05 witnesses have been examined till date. So far as two other cases registered against the petitioner, under the NDPS Act, are concerned, he has been acquitted in

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one case whereas he has undergone the sentence awarded in another case. In support of his contentions, learned counsel relies upon the order dated 18.07.2023 passed by the Hon'ble Supreme Court in Special Leave Petition (Crl.) No.4637/2023, titled as 'Subhabrata Roy @ Bapi Roy @ Roy Bapi Vs. State of West Bengal', vide which the appellant therein who had as many as 19 cases, including 02 cases under the NDPS Act, registered or pending against him, has been granted the benefit of bail.

4. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery of contraband effected in the present case, falls under commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity. It is further submitted that material witnesses are yet to be examined and that the petitioner is a habitual offender.

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

6. Indisputably, extent of contraband recovered in the present case, falls under commercial quantity, but the fact remains that the petitioner has been in custody since 22.03.2021. The prosecution witnesses are yet to be examined. Trial is unlikely to conclude any time soon. So far as two other cases registered against the petitioner, under the NDPS Act, are concerned, he has been acquitted in one case whereas he has undergone the sentence awarded in another case.

7. The Hon'ble Supreme Court in Subhabrata Roy @ Bapi Roy @ Roy Bapi's case (supra), has held as under:

“Learned counsel for the appellant has drawn our attention to similar orders passed by this Court and

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sought relief on similar terms. Per contra, learned counsel for the respondent stated that the trial is at the fag end and only one witness has to be examined and, therefore, this is not a fit case for grant of bail; also there are other cases pending against the appellant, as noted in paragraph 5 of the counter affidavit.

Having heard learned counsel for the respective parties and on perusal of the material on record, we are inclined to follow the orders passed by this Court in Criminal Appeal No.2013 of 2022 – Sabikul Kunahar @ Sabiku Nahar Mondal v/s. The State of West Bengal on 18.11.2022; SLP (Crl.) No.9064/2022 – Subrata Biswas @ Subra Biswas v/s. The State of West Bengal on 25.11.2022 and order passed in Criminal Appeal No.2293 of 2022 – Soni Devi v/s. The State of West Bengal on 15.12.2022. In all the aforesaid cases, the recoveries made were in the nature of 190 bottles or 30 bottles of Phensedyl Syrup etc. This Court, considering the fact that the accused therein were in custody for quite sometime, which is also so in the instant case, bail was granted to the accused therein. We see no reason to differ from the aforesaid orders. It is to be noted that in the present case, there was recovery of 28 bottles of 100ml each (2800ml) of Phensedyl Syrup. Considering the aforesaid orders and on the principle of Articles 14 and 21 of the Constitution of India, the appellant is released on bail, subject of course, to the conditions that may be imposed by the concerned Special Court.

The present Appeal is disposed of in the aforesaid terms'.

8. In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. Resultantly,

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without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

06.09.2023
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No