

2023:PHHC:095779
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-30473 of 2021
Date of Decision: 27.07.2023

Pappu

... Petitioner

VERSUS

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Tarun Singla, Advocate for the petitioners
Mr.C.L.Pawar, Addl. A.G., Punjab.

HARNARESH SINGH GILL, J (ORAL)

It has been pointed out by the learned State counsel that to explain the delay of trial the affidavit was sought. Thought the affidavit is ready but it has not been vetted.

Through this petition, the petitioner seeks regular bail in case FIR No.49 dated 01.05.2020 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Rampura, District Bathinda.

Learned counsel for the petitioners submits that though the alleged recovery effected from the petitioner from the Plastic bag and the recovery is of the commercial quantity, but the fact remains that the petitioner has been in custody since 01.05.2020 and out of the 11 prosecution witnesses only 01 prosecution witness had been examined. In support of his contentions, learned counsel relies upon the orders dated 22.08.2022 passed by the Hon'ble Supreme Court in SLP (Crl) No.5530/2022 titled as 'Mohammad Salman Hanif Shaikh Vs. State of Gujarat, and dated 04.05.2023, passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 3221/2023, titled as 'Hasanujjaman & Ors Vs. The State of West Bengal'.

The learned State counsel while opposing the bail application submits recovery effected from the petitioner is of commercial quantity and Section 37 bars the grant of bail to the accused in case of commercial quantity and the material prosecution witnesses are yet to be examined.

I have heard the learned counsel for the parties.

Though the alleged recovery effected from the petitioner is of commercial quantity and the petitioner is in custody for the last 2 years and 06 month. Ten prosecution witnesses are yet to be examined. There is no NDPS case registered or pending against the petitioner. Trial of the case would take time to conclude. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

6. The Hon'ble Supreme Court in *Hasanujjaman & Ors.* (supra), while granting the benefit of bail to the petitioners therein, has held as under:

“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.”*

In view of the above, 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.

(HARNARESH SINGH GILL)
JUDGE

27.07.2023
raman

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