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

CRM-M-28460-2023
Date of Decision: 20.11.2023

LOVEPREET SINGH @ LOVELY

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.126 dated 01.08.2019 registered under Sections 21, 25, 29 of NDPS Act, 1985 with the Police Station Sadar, Kapurthala, District Kapurthala.

2. The brief facts of the case are that while the police officials were on patrolling duty then at about 08.30 AM one clean shaven person with a black coloured bag in his right hand was seen getting down from an auto rickshaw and walking towards an I-20 car standing nearby. There were five persons in the car, who were identified as Rajbir Singh (granted bail vide order dated 05.04.2022 passed in CRM-M-43459-2021), Sukhjiwan Singh (granted bail vide order dated 05.04.2022 passed in CRM-M-43827-2021) sons of Balwant Singh, Lovepreet Singh @ Lovely (petitioner) son of Gurcharan Singh, Hans Raj (granted bail vide order dated 16.11.2019 passed in CRM-M-47765-2019) son of Dara Singh and Dilbag Singh son of

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Balwinder Singh. The person who had got down from the auto rickshaw upon seeing the police party got nervous and tried to turn back and the I-20 car being driven by Rajbir Singh also fled away from the spot. The person who got down from the auto rickshaw was apprehended by the police officials and on inquiry disclosed his name as Kapil Arora son of Manohar Lal Arora. The recovery of 05 kgs of heroin/Diacetylmorphine came to be effected from Kapil Arora (granted bail vide order dated 24.03.2022 passed in CRM-M-24306-2021).

3. During the course of investigation, Kapil Arora disclosed the names of his brother-in-law Deepak Kumar and Payal wife of Deepak.

The accused Sukhjivan Singh, Rajbir Singh and Dilbagh Singh were nominated as accused in the present case on the identification of Kapil Arora.

The accused Hansraj was arrested and he also disclosed the names of Rajbir Singh, Sukhjivan Singh, Lovepreet Singh @ Lovely and Dilbagh Singh who were travelling in the I-20 Car which had been given by Bachhitar Singh (granted bail vide order dated 20.09.2022 passed in CRM-M-42356-2022).

Bachhitar Singh was nominated in the present case on 09.12.2019 as he was in Jail in FIR No.133 dated 24.11.2019 under Section 21 of the NDPS Act, Police Station Lohian and FIR No.193 dated 24.11.2019 under Section 21 of the NDPS Act, Police Station Kartarpur.

The supplementary challan qua accused Hans Raj was presented before the Trial Court and accused Dilbagh Singh and lovepreet Singh @ Lovely were declared proclaimed offender by the Trial Court on 10.02.2020.

Meanwhile, accused Dilbagh Singh was arrested in FIR No.47 dated 27.02.2021 under Section 21 of the NDPS Act, Police Station Sultanpur whereas the petitioner was arrested in FIR No.41/2020 under Section 22/25 of the NDPS Act, Police Station Sidwa Bete.

The supplementary challan was presented against Dilbagh Singh and Lovepreet Singh @ Lovely.

4. The learned counsel for the petitioner contends that no recovery whatsoever has been effected from him. His co-accused have been granted the concession of bail including Kapil Arora from whom the recovery was initially effected. In the one other case registered against him bearing FIR No.41 dated 03.04.2020 under Sections 21, 25, 29 of the NDPS Act, Police Station Sidhwan Bet, District Ludhiana (Rural), he had been granted the concession of bail by this Court vide order dated 25.07.2023 (Annexure A-1). As he was in custody since 19.03.2021 and none of the 32 prosecution witnesses had been examined so far, the trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in the case of *Nitish Adhikary @ 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 *Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023.*

5. A reply dated 20.11.2023 by way of an affidavit of Satnam Singh, PPS, Deputy Superintendent of Police, Headquarter Kapurthala has

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been filed on behalf of the State by the learned counsel for the State. The same is taken on record. She contends that the petitioner is a convict in one other case under the NDPS Act. Therefore, he was not entitled to the concession of bail. She, however, concedes that the petitioner was in custody since 19.03.2021, none of the 32 prosecution witnesses had been examined so far and in one other case registered against him, he had been granted the concession of bail (Annexure A-1).

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

7. 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.”

8. In **Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023, decided on 04.05.2023,** held as under:-

“1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’) in FIR No.18/2022, dated 09.01.2022, registered at Police Station Islampur, District Murshidabad, West Bengal.

*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.*

(emphasis supplied)

9. Admittedly, in ‘Nitish Adhikary @ Bapan’ (supra) and ‘Hasanujjaman & others’ (supra), the accused therein had been granted the concession of bail by the Hon’ble Supreme Court after they had undergone approximately one and a half years of custody. They were also first-time offenders as is borne out from the orders.

10. In the present case, the petitioner has undergone more than two and a half years of custody. In the one other case registered against him in which he came to be convicted, he had been granted the concession of bail. In view of the fact that the petitioner has undergone a substantial period of custody, 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

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which provides for the right to a speedy trial and the case of the petitioner can be considered for the grant of bail.

11. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Lovepreet Singh @ Lovely son of Gurcharan Singh 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.

12. 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.

13. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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.

14. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

20.11.2023

JITESH

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