

CRM-M-29120-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-29120-2023 (O & M)****Date of decision: 03.07.2023**

Kaptan Singh alias Khana

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.G. Chandiwalla, Advocate,
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.25 dated 27.02.2021 under Section 22 of the NDPS Act, registered at Police Station Kotbhai, District Sri Muktsar Sahib.

2. The brief facts of the case are that while the police party during patrolling duty was present at the *nakabandi* near water works Village Asha Buttar, then, one man and one woman were seen coming from the side of the Village Kauni via Kaauni. On seeing the police party, they got perplexed, turned-around and started running. The lady was apprehended (subsequently known to be Hardeep Kaur @ Akki and granted bail vide order dated 12.05.2023 passed in CRM-M-22556-2023). She was holding a transparent plastic bag in her hand. However, the man (subsequently known to be Kaptan Singh @ Khana, the present petitioner) was able to run away.

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The search of the bag revealed 800 intoxicating tablets of Cloverdol 100 SR. Thereafter, the instant FIR came to be registered.

3. The learned counsel for the petitioner contends that the allegations against the petitioner are baseless. The mandatory provisions of search and seizure have not been complied with. As the petitioner was in custody since 15.04.2021 and only 03 out of 15 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 grant of concession of bail, moreso, when his co-accused, namely, Hardeep Kaur @ Akki has been granted the concession of bail vide order dated 12.05.2023 (Annexure P-4). Reliance was placed on the judgment of the Hon'ble Supreme Court in '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 followed by this Court in the case of 'Balraj Singh versus State of Punjab (CRM-M-57386-2022 decided on 14.12.2022)'.

5. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband has been recovered from the petitioner, and therefore, the bar contained under Section 37 of the NDPS Act did not entitle him to the grant of bail. He, however, fairly concedes that the petitioner was a first-time offender, was in custody since 15.04.2021 and only 03 out of 15 prosecution witnesses had been examined so far.

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

“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 aforesaid 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.

8. In the instant case, admittedly, the petitioner is in custody since 15.04.2021 and only 03 out of 15 prosecution witnesses have been examined

so far. The petitioner is also a first-time offender. Therefore, the conditions

SUKHPREET KAUR
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envisaged under Section 37 of the NDPS Act can be relaxed to an extent keeping in view 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.

9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Kaptan Singh @ Khana is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present one

11. In addition, the petitioner (or someone 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.

(JASJIT SINGH BEDI)
JUDGE

July 03, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No