

2023:PHHC:115474

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-29408-2023
Date of Decision: 31.08.2023**

Chamandeep Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vishal Sharda, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER J.

1. Petitioner (Chamandeep Singh) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.458 dated 25.12.2021 (Annexure P-1), under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Dabwali Sadar, District Sirsa.
2. The first petition filed under Section 439 of the Code of Criminal Procedure (CRM-M-13256-2022) by petitioner was withdrawn at that stage vide order dated 14.02.2023.
3. Upon issuance of notice, status report by way of affidavit of Mr. Gurdial Singh, H.P.S., Deputy Superintendent of Police, Kalanwali,

District Sirsa has been filed on behalf of State of Haryana, which is already on record.

4. Custody certificate dated 23.08.2023 of the petitioner and additional affidavit dated 29.08.2023 of Mr. Rajender Singh, H.P.S., Deputy Superintendent of Police, Dabwali, District Sirsa, filed by learned State counsel in Court today are taken on record, subject to all just exceptions.

5. Briefly, the case of prosecution is that on 25.12.2021, the police party headed by Sub Inspector Datta Ram was patrolling with regard to the prevention of anti-social elements and when they were standing in front of Sri Annapurna Dharamkanta, Village Sakta Khera then one white-red coloured truck-trolla [make TATA-4018 (18 tyres)] bearing registration No.PB-03-Y-7983 was seen coming from the side of Village Chautala and it was signalled to stop, whereupon the driver immediately stopped the truck-trolla and he tried to run away. Thereupon, on the basis of suspicion, Sub Inspector Datta Ram along with the police party apprehended the said driver, who upon inquiry, revealed his name as Chamandeep Singh (petitioner) s/o Gurcharan Singh. Upon checking the truck-trolla, it was seen that the same was covered with the blue coloured plastic tarpaulin. Thereafter following the due procedure, the driver of truck-trolla was made aware of his legal rights regarding his search as well as the search of truck-trolla to be conducted, whereupon the driver stated that he wanted to get the search to be conducted by some Gazetted Officer. Thereafter, Bhoop Singh, Sub Divisional Officer, H.S.A.M.B., Dabwali, appointed by the Deputy Commissioner, Sirsa was called at the spot and he was made aware of the circumstances and the search of Chamandeep Singh (petitioner) as well as the truck-trolla was carried out. From the search of truck-trolla, total 860 bags of Ground Nut D'Oil Cake Material No.-41082601 Batch

No.08321JCI, weighing 33970 kgs., rate per kg.-Rs.60.50 (total amounting to Rs.20,55,185/-) were recovered, and apart from this, five plastic bags of white colour were also found kept separately near the *dala* of truck, which upon opening, were found to be containing *poppy husk*, and on weighing the same, total 80 kgs. of *poppy husk* along with the plastic bag (each bag containing 16 kgs.) was recovered. Thereafter, the recovered contraband was taken into police possession as per the procedure. Accordingly, the petitioner was arrested in the instant case.

6. As per status report, upon registration of FIR, the investigation was conducted and the petitioner is stated to have made a disclosure statement admitting his guilt. The samples from the recovered intoxicant substance were drawn as per the instructions of Court and the same were sent to the Regional Forensic Science Laboratory, Hisar, for examination, whereupon report dated 27.04.2022 (Annexure R-2) was received stating that the samples 1, 2, 3, 4 and 5 were identified as *poppy straw (choorapost)* of *Papaver Somniferum-L*. It is further mentioned in the status report that on 27.12.2021, the petitioner is stated to have made another disclosure statement saying that Ranjit Singh, Rawal @ Raju, Jasraj and Fauji @ Avtar Singh, loaded the aforesaid bags of *poppy husk* in the truck-trolla of petitioner and they gave an amount of Rs.16,000/- as commission to him. Further, the petitioner was directed to make a WhatsApp call at mobile No.8690669787, upon reaching Punjab, and it was said to the petitioner that the balance amount shall be deposited in his bank account. On the basis of said disclosure statement, co-accused Jasraj was arrested on 27.12.2021 and thereafter, he also made a disclosure statement *inter alia* stating that he along with his brothers Ranjit Singh, Rawal @ Raju and Fauji @ Avtar Singh had directed Chamandeep Singh (petitioner) that if he takes the *poppy*

husk to Punjab then they will pay him commission @ Rs.400/- per kg. It is also stated in the status report that investigation *qua* petitioner and co-accused Jasraj in this case is complete and challan stands presented.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case FIR (Annexure P-1). It is submitted that the contraband allegedly recovered from the petitioner is a planted one. More so, learned counsel for the petitioner submits that the alleged occurrence is stated to have taken place on 25.12.2021 at 2:00 P.M., however from the contents of FIR, it is evident that the competent authority was called at 10:49 P.M. and the same is stated to have arrived at the spot at 11:30 P.M. Learned counsel for the petitioner further submits that no independent witness was joined during the alleged search of truck-trolla in question.

8. Learned counsel for the petitioner states that co-accused Jasraj has already been granted regular bail by a co-ordinate Bench of this Court vide order dated 29.03.2022 passed in CRM-M-9723-2022 and one Rawal Ram has been extended the concession of anticipatory bail by this Court vide order dated 13.03.2023 passed in CRM-M-31768-2022. Copies of the orders thereof have been handed over by learned counsel for the petitioner in Court today, which are taken on record, subject to all just exceptions.

9. Learned counsel for the petitioner contends that the petitioner is in custody since 25.12.2021 in this case and no other case is pending against him. It is stated that investigation *qua* the petitioner is complete and challan stands presented on 17.06.2022, thus trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed

by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

10. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence as the recovery effected from petitioner falls in the category of 'commercial quantity', thus bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted. However, learned State counsel while referring to the custody certificate has submitted that there is no other case pending against the petitioner and he has undergone actual custody in this case for a period of one year, seven months and twenty six days (as on 23.08.2023). It is also conceded by learned State counsel that investigation *qua* petitioner is complete and challan also stands presented.

11. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

12. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly it is apposite to refer to a few judgments rendered by the Hon'ble Supreme Court.

13. The Hon'ble Supreme Court in *Chitta Biswas @ Subhas v. State of West Bengal (Criminal Appeal No. 245 of 2020 dated 07.02.2020)* observed as under:-

“ xxx

The instant matter arises out of application preferred by

the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.

With the aforesaid directions, the appeal stands allowed.”

14. The Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan v. State of West Bengal (Special Leave(Crl.) no. 5769 of 2022)*** held as under:-

“ xxxx

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.”

15. In ***Shariful Islam @ Sarif v. State of West Bengal (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022)***, the Hon'ble Supreme Court held that:-

“ 1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of West Bengal and carefully perused the material available on record.

2. Taking into consideration the fact that the petitioner is reported to be in custody since 27.12.2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. *The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him.*

4. *The Special Leave Petition stands disposed of on the above terms.*

5. *Pending application filed in the matter also stands disposed of.”*

16. In ***Karnail Singh v. State of Odisha (Criminal Appeal no. 2027 of 2022 dated 22.11.2022)***, Hon'ble Supreme Court held as under:-

“The appellant in the present case was only a Khalasi of the vehicle who did not run away while the others ran away and have still not been apprehended. He has been in custody from 21.03.2021 i.e. more than a year and a half.

In view of the aforesaid facts and circumstances, we grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.”

17. The Hon'ble Supreme Court in ***Karim Adaldar v. State of West Bengal (Special Leave to Appeal (Crl.) No. 8653 of 2022)*** held that:-

“Having heard learned counsel appearing for the parties and keeping in view the period of custody already undergone by the petitioner, and there being no likelihood of completion of trial in the near future, but without expressing any views on the merits of the case, the petitioner is ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of learned Additional Sessions Judge, 6th Court, Barasat, District – North 24 Parganas, West Bengal.”

18. Further, Hon'ble Supreme Court vide judgment dated 25.1.2023 arising out of ***SLP No.6690 of 2022***, titled as ***“Dheeraj Kumar Shukla Vs. State of Uttar Pradesh”*** has granted bail in a case registered under the

Narcotic Drugs and Psychotropic Substances Act, where the accused alongwith co-accused was found in possession of 'commercial' quantity of 'Ganja' and had been behind bars since the last two and a half years while observing that in the absence of any criminal antecedents, the conditions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act could be dispensed with at that stage, particularly when there was delay in conclusion of trial.

19. Recently, Hon'ble Supreme Court in judgment dated 04.05.2023 passed in ***Special Leave Appeal (Crl.) No(s).3221 of 2023*** titled as ***"Hasanujjaman and others Vs. The State of West Bengal"***, 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.*

- x - x - ”

20. Concededly, the alleged recovery in this case falls under the category of commercial quantity and bar of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted, however, while dealing with Section 37 *ibid*, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence.

21. The petitioner is in custody for a period of one year, seven months and twenty six days (as on 23.08.2023). Investigation *qua* petitioner in the case is complete and challan stands presented on 17.06.2022. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude. Further, co-accused Jasraj has been granted regular bail by a co-ordinate Bench of this Court vide order dated 29.03.2022 passed in CRM-M-9723-2022 and one Rawal Ram has been granted anticipatory bail by this Court vide order dated 13.03.2023 passed in CRM-M-31768-2022.

22. In the facts and circumstances of the present case and on an assessment of material on record especially, the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, I am of the *prime facie* view at this stage that the petitioner may not have committed the alleged offence and he is unlikely to commit an offence under the Narcotic Drugs and Psychotropic Substances Act, while on bail.

23. In view of the above discussion, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial.

24. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.2,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

25. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

26. The petition is accordingly disposed of.

27. All pending application(s), if any, shall also stand closed.

31.08.2023

Apurva

(HARSH BUNGER)

JUDGE

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|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |