

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-34290-2021 (O/M)
Date of decision : 24.07.2023

Punam Gupta

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Gurpal Singh Sandhu, Advocate assisted by
Ms. Ramandeep Kaur, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG Punjab.

-. -

-. -

HARSH BUNGER, J.

1. Petitioner (Punam Gupta) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No. 57 dated 01.04.2021, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), registered at Police Station Lalru, District SAS Nagar.

2. Status report by way of affidavit dated 14.02.2022 of Mr. Darpan Ahluwalia, IPS, Asstt. Superintendent of Police, Sub Division Dera Bassi, Tehsil Dera Bassi, District SAS Nagar, has been filed on behalf of State of Punjab, which is already on record.

3. Custody certificate dated 03.05.2023 of the petitioner has already been filed by learned State counsel, which is already on record.

4. Briefly, the aforesaid case FIR was registered on the basis of ruqa prepared by Sub Inspector Jasanpreet Singh wherein it was stated that

on 01.04.2021 he was present at the police station when information was received from ASI Ashwani Kumar that on the said day, ASI Ashwani Kumar alongwith Constable Baljinder Singh and Lady Constable Dhanjit Kaur was on patrolling in the area of police station in the Government vehicle in the search of suspects. When they were going on Chandigarh-Ambala highway and reached at Lehli Chowk near ITI Chowk Lalru, then at about 5.00 PM, a lady was seen standing just before Essar Petrol Pump, Lalru, carrying a maroon coloured lady purse in her arm. It was stated that upon seeing her, they stopped the vehicle but after seeing the police vehicle, the said lady due to fear started walking on the kacha path towards fields on the side of road and tried to abscond, however, she was caught with the help of Lady Constable Dhanjit Kaur and other fellow employees on the basis of suspicion. Upon inquiry, the said lady disclosed her name as Punam Gupta. It was informed by the aforesaid ASI that he had suspicion that the said lady was carrying some intoxicant material. Accordingly, Constable Baljinder Singh was sent to police station for calling some competent investigating officer to the spot. It appears that thereafter the aforesaid Sub Inspector Jasanpreet Singh alongwith ASI Parveen Kaur reached at Essar Petrol Pump, Lalru where ASI Ashwani Kumar alongwith police party and the suspected lady was present. After following the procedure, the aforesaid lady was made aware of her legal rights regarding search etc. whereupon she desired that the search be carried out in the presence of gazetted officer. Accordingly, Gurpreet Singh, PPS, Deputy Superintendent of Police, SAS Nagar was requested to reach at the spot. Upon arrival of aforesaid Deputy Superintendent of Police at the spot and after following the process, the aforesaid lady was made aware of her legal rights regarding search. During search of the purse (hanging

in the arm of Punam Gupta), Heroin was recovered from the transparent plastic bag, which upon weighing on the electronic scale came to be 305 grams alongwith the weight of the plastic bag. Thereafter, the samples were drawn and recovery memos were prepared. Thereafter, the personal search of Punam Gupta (petitioner) was conducted by ASI Parveen Kaur on the instructions of DSP Gurpreet Singh, from whom Indian currency notes of Rs. 250/- alongwith her Indian passport, PAN card, a paper in which statement of transactions are stated to have been noted (allegedly in respect of recovered Heroin) and a black coloured mobile phone (MI) were recovered. Accordingly, the petitioner was arrested.

5. The petitioner applied for regular bail before the trial Court, which was dismissed, vide order dated 12.08.2021, passed by learned Judge, Special Court, SAS Nagar (Annexure P-2).

6. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. It is submitted that no recovery was effected from the conscious possession of the petitioner and the alleged recovery was from a thoroughfare and no independent witness was joined by the police party. It is submitted that the petitioner is a lady and suffering from various diseases and she is also H.I.V. positive. It is submitted that the entire prosecution story is false as the petitioner has been picked from the house and has been falsely implicated in this case. It is further submitted that the mandatory provisions of NDPS Act have not been followed. Learned counsel for the petitioner contends that the petitioner was falsely implicated in this case by the SHO as the petitioner was not fulfilling his demand. It is submitted that the petitioner has been in custody since 01.04.2021. The

investigation in the case is complete, challan stands presented against petitioner on 05.08.2021, charges have been framed on 20.01.2022 and the trial is going on. Out of total 13 prosecution witnesses, only 1 witness has been examined. Thus, the trial is likely to take time to conclude and no useful purpose would be served by keeping petitioner behind the bars for indefinite period.

Learned counsel for the petitioner has further placed on record the copies of zimni orders passed by the trial Court to contend that the prosecution witnesses are not being examined. It is submitted that the petitioner is ready to abide the conditions as may be imposed by this Court or by the trial Court. Accordingly, prayer for grant of regular bail has been made.

7. Per contra, learned State counsel has opposed the prayer for grant of regular bail to the petitioner on the ground of seriousness and gravity of offence. It is submitted that 305 grams of Heroin was recovered from the petitioner, which falls in the category of 'commercial' quantity. Accordingly, the bar under Section 37 of NDPS Act is attracted. He further submits that in case the petitioner is granted regular bail, she may abscond. However, learned State counsel has not disputed the fact that the petitioner (Punam Gupta) is a known case of H.I.V. positive. It is further not disputed that the investigation in this case is complete, challan stands presented against petitioner on 05.08.2021, charges have been framed on 20.01.2022 and the trial is going on. It is further conceded that out of total 13 prosecution witnesses, only 1 witness has been examined. Learned State counsel has further not disputed the fact that the petitioner has been in custody for 2 years and 28 days (as on 03.05.2023). While referring to the custody certificate, it is also not disputed that there is no other case against the petitioner.

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

9. 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 the judgments rendered by Hon'ble Supreme Court.

10. The Hon'ble Supreme Court in *Chitta Biswas alias Subhas v. State of West Bengal* (Criminal Appeal No. 245 of 2020 dated 7.2.2020) 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 21.7.2018 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.”

11. 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 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 1 year and 7 months as on 9.6.2022. 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.”

12. In *Shariful Islam alias Sarif v. State of West Bengal* (Special Leave to Appeal (Crl) 4173 of 2022 dated 4.8.2022), 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.”

13. 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 21.3.2021 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.”

14. 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.”

15. Coming to the case in hand, the petitioner is a lady, who is stated to be suffering from various diseases and she is also a known case of H.I.V. positive. The petitioner has been in custody since 01.04.2021 and as per the custody certificate, the petitioner has undergone total custody of 2 years, and 28 days (as on 03.05.2023) and there is no other case against the petitioner. The investigation in this case is complete, charges have been framed and the trial is going on. Out of 13 prosecution witnesses, only 1 witness has been examined. Thus, the trial is likely to take some time to conclude.

16. Keeping in view the aforementioned circumstances and the legal position as indicated above, present petition is allowed and the petitioner is ordered to be released on regular bail subject to her 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 her address at which she 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 her telephone number to the concerned Station House Officer. She would also furnish her undertaking to the effect that she will not indulge in any illegal activity.

17. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs. 25,000/- 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.

18. 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.

- 19. The petition is accordingly disposed of.
- 20. All pending application(s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

24.07.2023.
sjks

Whether speaking/reasoned order : Yes / No

Whether Reportable : Yes / No