

2023:PHHC:114408

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

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CRM-M-35169-2023 (O&M)
Date of Decision: 31.08.2023

VIJAY SAINI

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rajneesh Budhiraja, Advocate for the petitioner.

Mr. Hakam Singh, AAG Punjab.

HARNARESH SINGH GILL, J.(Oral)

Prayer in this petition is for grant of regular bail to the petitioner in case bearing FIR No.114 dated 04.07.2020, registered under Sections 22 and 61 of the NDPS Act, at Police Station Lalru, District SAS Nagar (Mohali).

Status report by way of an affidavit dated 25.08.2023 of the Assistant Superintendent of Police, Sub-Division Derabassi, District SAS Nagar (Mohali) filed on behalf of the respondent-State, in the Court, is taken on record. Copy thereof has been supplied to the learned counsel opposite.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case; that though extent of intoxicating tablets i.e. 4080 capsules (17 boxes each box containing 30 sheets), namely, Payeevon Spas Plus allegedly recovered in the present case, falls under commercial quantity, yet the fact remains that the petitioner has been in custody since 04.07.2020 i.e. for more than 3 years; that the said recovery was effected from the scooty, which was driven by the petitioner and that out of total 14 prosecution witnesses, only 5 witnesses have been

examined so far. It is further submitted that there is no other case registered or pending against the petitioner, at least of a similar nature.

In support of his contentions, learned counsel relies upon the order dated 01.08.2022 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.5769-2022, titled as 'Nitish Adhikary @ Bapan Vs. State of West Bengal'.

On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery of intoxicating tablets effected in the present case, falls under commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity. It is further submitted that material witnesses are yet to be examined and thus, the petitioner be not granted the concession of regular bail.

I have heard the learned counsel for the parties.

Indisputably, extent of intoxicating tablets recovered in the present case, falls under commercial quantity, but the fact remains that the petitioner has been in custody since 04.07.2020 i.e. for more than 3 years. Most of the prosecution witnesses are yet to be examined. Trial is unlikely to conclude any time soon. There is no other case registered or pending against the petitioner, at least of a similar nature.

The Hon'ble Supreme Court in Nitish Adhikary @ Bapan, while granting the benefit of bail to the petitioner therein, has held as under:

“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.”

In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. Resultantly, 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.

31.08.2023

Aman Jain

**(HARNARESH SINGH GILL)
JUDGE**

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>