

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

224

CRM-M-30052-2023 (O&M)
Date of decision: 21.08.2023

Brijesh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ravi Rana, Advocate for the petitioner.

Mr. Hakam Singh, AAG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

1. Through this second petition, the petitioner seeks regular bail in case bearing FIR No.142 dated 12.08.2021, registered at Police Station Lalru, District Mohali, under Sections 307, 341 and 34 IPC and Sections 392, 379-B, 326, 411 IPC and Sections 20 and 22 NDPS Act, 1985.
2. Status report by way of affidavit dated 19.08.2023 of the Assistant Superintendent of Police, Sub-Division Dera Bassi, District SAS Nagar, submitted by the learned State counsel in the Court, is taken on record.
3. As per the prosecution version, recovery of 570 gm. of *Ganja* and 1000 Tramadol Hydrochloride IP Celcidal-100 SR, and knife was effected from the room of the petitioner and Vivo mobile phone and Sim card of the brother of the complainant and a stolen Splendor Motorcycle bearing

registration No.PB-65-AB-6946, have also been recovered from the petitioner and Ritik.

4. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that though the recovery effected in the present case falls under the commercial quantity, but the fact remains that the petitioner has been in custody since 31.08.2021 and that out of 32 prosecution witnesses, 02 have been examined so far. So far as two other cases registered against the petitioner, are concerned, the same do not pertain to the NDPS Act, rather the same have been registered under the provision of the Indian Penal Code and he has been released on bail therein. 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'.

5. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery 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. The injury on the left side of abdomen near the kidney of the brother of the complainant has been attributed to the petitioner. It is further submitted that the prosecution witnesses are yet to be examined. He does not dispute the custody period of the petitioner.

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

7. Indisputably, the recovery effected in the present case, falls under commercial quantity, but the fact remains that the petitioner has been in custody since 31.08.2021. Remaining 30 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 under the NDPS Act and as far as two other cases are concerned, FIR No.265 dated 31.08.2021, was registered after arrest of the petitioner in the present case and the petitioner is on bail in both the cases.

8. 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 afore-stated terms.

Pending application(s), if any, shall stand disposed of.”

9. 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.

(HARNARESH SINGH GILL)
JUDGE

21.08.2023
Mangal Singh

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No