

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

CRM-M-30556-2023

Date of Decision:-03.08.2023

Deepak Kumar @ Deepu.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

AND

CRM-M-31452-2023

Kulwant Singh @ Pala.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Jashandeep Singh Sandhu, Advocate for the Petitioner
(in CRM-M-30556-2023).

Mr. Ashok Kumar Khunger, Advocate for the Petitioner
(in CRM-M-31452-2023).

Mr. G.S. Dhillon, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

By this common order I shall dispose of both the
aforementioned bail petitions as they have arisen out of one and the same
FIR.

2. The Prayer in this petition under Section 439 Cr.PC is for the
grant of regular bail in case FIR No.74 dated 21.05.2021 under Sections

22(c) and 29 of NDPS Act registered at Police Station Bahavwala, District Fazilka, Punjab.

3. The brief facts of the case are that while the police party was on patrolling duty an information was received that Deepak Kumar @ Deepu (petitioner in CRM-M-30556-2023), Baljinder Singh (since granted bail vide order dated 29.05.2023) and Kulwant Singh @ Pala (petitioner in CRM-M-31452-2023)) would be bringing intoxicating tablets from Rajasthan and would sell the same. They were travelling in a car bearing registration no.RJ-14-8C-3819 and if a *nakabandi* was set up they could be apprehended along with tablets.

Based on the aforesaid information the FIR came to be registered and subsequently the petitioners and their co-accused came to be apprehended along with 25000 intoxicating tablets.

4. The Counsel for the petitioners contend that the mandatory provisions regarding search and seizure have not been complied with in their proper perspective including Sections 42, 50 & 52 of the Act. Nothing has been recovered from the conscious possession of the petitioners. As the petitioners were in custody since 21.05.2021 and only 02 of the 18 prosecution witnesses had been examined so far, the Trial of the present case was not likely to be concluded anytime soon and therefore, the petitioners were entitled to the concession of bail. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Nitish Adhikary @ Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Decided on 01.08.2022* which had been followed by this Court in *Balraj Singh Vs. State of Punjab CRM-M-57386-2022 Decided on 14.12.2022*.

5. The Counsel for the State on the other hand contends that the serious nature of the allegations did not entitle the petitioners to the grant of

bail. He however, does not dispute the fact that the petitioners are a first time offenders, are in custody since 21.05.2021, only 02 out of 18 prosecution witnesses had been examined and their co-accused Baljinder Singh has been granted the concession of bail.

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

7. The Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Decided on 01.08.2022*** held as under:-

“ 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 aforestated terms.

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

The aforementioned decision has been followed by this Court in the case of ***Balraj Singh Vs. State of Punjab CRM-M-57386-2022 Decided on 14.12.2022.***

8. In the instant case, admittedly the petitioners are stated to be in custody since 21.05.2021. Only 02 out 18 prosecution witnesses have been examined so far and they are first time offenders with no other case registered against them under the NDPS Act. Therefore, the provisions of Section 37 of the NDPS Act can be diluted to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to speedy Trial and the petitioners can be granted the concession of bail.
9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioners-**Deepak Kumar @ Deepu** son of Sh. Jaipal and **Kulwant Sngh @ Pala** son of Sh. Sher Singh are ordered to be released on bail subject to their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.
10. The petitioners shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that they are not involved in any other crime other than the present one.
11. In addition, the petitioners (or anyone on their behalf) shall prepare an FDR in the sum of Rs.1,00,000/- each 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 petitioners from trial without sufficient cause.
12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 03, 2023
Vinay

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