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

**CRM-M-34612-2022
Date of Decision: 17.05.2023**

Ranbir Singh @ Ranbir Kumar @ Rana

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, AAG, Punjab.

HARSH BUNGER J. (ORAL)

1. Petitioner (Ranbir Singh @ Ranbir Kumar @ Rana) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.191 dated 07.08.2021, under Sections 22, 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Sadar Patiala, District Patiala.
2. Upon issuance of notice, status report by way of affidavit dated 15.03.2023 of Mr. Gurdev Singh Dhaliwal, P.P.S., Deputy Superintendent of Police, Circle Rural, District Patiala, has been filed on behalf of State of Punjab, which is already on record.
3. Custody certificate dated 16.05.2023 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to

all just exceptions.

4. Succinctly, the aforesaid FIR was registered on the complaint of Sub Inspector Daljit Singh, alleging that on 07.08.2021, he, along with other police officials, was on patrolling duty in a Government car bearing registration No.PB-11-CU-3112, being driven by Driver Assistant Sub Inspector Raj Singh and when they were present near New Grain Market, Sanaur Road, Patiala in connection with search of bad elements and were carrying out a formal checking then at about 06:00 P.M., a hair cut young man was seen coming from Sanaur side on a black motorcycle (Hero Honda Splendor) bearing registration No.PB-39-E-3377, who upon seeing the police party, suddenly got perplexed and tried to turn back his motorcycle. The said man took out a polythene bag from the left pocket of his grey colour lower and threw it on one side of the road. Subsequently, he was apprehended by the police, whereupon he disclosed his name as Ranbir Singh @ Ranbir Kumar @ Rana (petitioner) s/o Karnail Ram and after following the due procedure of investigation, 1800 intoxicant tablets of white colour were recovered from him, which falls in the category of “commercial quantity”.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR No.191 dated 07.08.2021. It is submitted that the alleged recovery was not effected from the conscious possession of the petitioner. Learned counsel states that Sub Inspector Daljit Singh, who apprehended the petitioner in this case, himself became the complainant after sending the *ruqa* and later on, he conducted the entire investigation in the present case. Moreover, no private witness was joined at the time of alleged recovery. It is stated that provisions of the Narcotic Drugs and Psychotropic Substances Act were clearly violated in the present

case.

6. Learned counsel for the petitioner submits that co-accused, namely Jaspreet Singh, has been granted anticipatory bail by a co-ordinate Bench of this Court vide order dated 27.10.2021 passed in CRM-M-39409-2021, which was confirmed vide order dated 22.03.2022. Learned counsel states that the petitioner applied for regular bail before the Judge, Special Court, Patiala, which was wrongly declined vide order dated 25.02.2022 (Annexure P-4). Learned counsel contends that no other case under the Narcotic Drugs and Psychotropic Substances Act is pending against the petitioner and he has undergone custody for a period of one year, nine months and ten days in the present case (as on 16.05.2023); investigation in the case is complete, challan stands presented on 17.12.2021 and even charges have been framed on 24.02.2022. It is submitted that there are sixteen prosecution witnesses in this case and only two witnesses have been examined so far, hence 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, accordingly prayer for grant of regular bail is made.

7. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of offences by submitting that contraband recovered from the petitioner falls in the category of “commercial quantity”, hence bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted. However, it is fairly conceded by learned State counsel that the petitioner is in custody for a period of one

year, nine months and ten days in the present case; investigation in the case is complete, challan stands presented and charges have also been framed. Learned State counsel also concedes that no other case is pending against the petitioner.

8. I have heard learned counsel for the parties and perused the paper book as well as status report 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 @ 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.”

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 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.”

12. In ***Shariful Islam @ Sarif v. State of West Bengal (Special Leave to Appeal (Crl) 4173 of 2020 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.”

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 21.03.2021 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.”

14. The Hon'ble Supreme Court in ***Karim Adaladar 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. 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.

16. In this case, the petitioner is in custody for a period of one year, nine months and ten days (as on 16.05.2023). Investigation in the case is complete, challan stands presented on 17.12.2021 and even charges have been framed on 24.02.2022. As per status report, out of total sixteen prosecution witnesses, only two witnesses have been have been examined,

by now. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude. Even as per the FIR, the petitioner is alleged to have thrown the bag (allegedly containing contraband) on one side of the road, thus, the issue of conscious possession of allegedly recovered contraband would be a debatable issue.

17. In the instant case, the alleged recovery 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 of the Narcotic Drugs and Psychotropic Substances Act, 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. In the facts of the present case and on an assessment of material on record, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence. Further, considering the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, there is nothing on record to suggest that he is likely to commit an offence under the Narcotic Drugs and Psychotropic Substances Act, while on bail.

18. 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 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 first Monday of every month till the conclusion of trial.

19. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- 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.

20. 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.

21. The petition is accordingly disposed of.

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

17.05.2023*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No