

CRM-M-40386-2021

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-40386-2021 (O & M)****Date of decision: 08.05.2023**

Amit Malik

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Dharam Vir Sharma, Sr. Advocate,
with Ms. Sundur Kumari, Advocate,
with Tushar Sharma, Advocate,
for the petitioner.

Ms. Ramta K. Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.49 dated 13.04.2021 under Section 22 of the NDPS Act and Section 29 NDPS Act (added later on), registered at Police Station Sadar, Kotakpura, District Faridkot.

2. The brief facts of the case are that while the police party was on patrolling duty, from the front side one shorn hair person was seen coming carrying a red and black colour kit bag on his shoulder. He was asked to stop but he got confused, turned-around and went to the other side. On suspicion, he was apprehended and disclosed his name as Lakhwinder Singh @ Lakha. From one pocket of the bag, the recovery of intoxicant tablets make Tramadol Celcidial-100 SR having batch No.21AT005 MFG. Apr

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2021 Exp.Mar 2023 MRP Rs.192.50 total 300 strip/leaf, each strip having 10 tablets totalling 3000 intoxicant tablets and from the other pocket of the bag, make Tramadol Celcidial-100 SR having batch No.UFT921 MFG.04.2021 Exp. 03.2023 MRP Rs. 206.30 Total 200 strip/leaf, each strip having 10 tablets each totalling 2000 intoxicant tablets and from the small pocket of the kit bag, intoxicant tablets make Alprazolam Tablets IP 0.5 MG batch No.PCCAA 755 MFG Date 01-2021 Expiry Date 12-2023 MRP 22.51 total 120 strips/leaf having 10 tablets in each leaf totalling 1200 intoxicant tablets were recovered.

3. During the course of investigation, Lakhwinder Singh @ Lakha disclosed that he had been provided the contraband by a person who was running a medical store whose name he did not know. He could, however, identify the supplier. On verification of the mobile number provided by Lakhwinder Singh @ Lakha, the identity of the user was revealed to be Amit Malik (petitioner). Subsequently, he came to be nominated as an accused and an offence under Section 29 of the NDPS Act came to be added. On his arrest, the petitioner got recovered two bulk parcels i.e. one parcel marked Sr. No.01 containing 600 strips of Alprazolam Tablets IP 0.5 each containing 10 intoxicant tablets and from another parcel marked Sr. No.02 containing 500 strips each containing 10/10 tablets make of Tramadol Celcidial 100 SR totalling 5000 tablets.

4. The learned counsel for the petitioner contends that the petitioner is a Chemist by profession and registered with the Delhi Pharmacy Council. The petitioner has clean antecedents and has never been involved in any offence prior to the instant FIR. In fact, he has been falsely

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co-accused and the subsequent recovery has been foisted upon him. As the petitioner was in custody since 17.04.2021, only 06 out of the 22 prosecution witnesses had been examined so far and was a first-time offender, he was entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in 'Nitish Adhikary @ Bapan versus The State of West Bengal, SLP (Crl.) Nos. 5769/2022 arising out of judgment and order dated 04.05.2022 in CRM (NDPS) No.442-2022 decided on 01.08.2022 and followed by this Court in the case of 'Balraj Singh versus State of Punjab (CRM-M-57386-2022 decided on 14.12.2022)'.

5. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband has been recovered from the petitioner. Therefore, the bar contained under Section 37 of the NDPS Act did not entitle him to the grant of bail. He, however, fairly concedes that the petitioner is a first-time offender, in custody since 17.04.2021 and only 06 out of 22 prosecution witnesses have been examined so far.

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

7. The Hon'ble Supreme Court in the case of 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 aforesaid terms.

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

This Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022** has followed the dictum laid down by the Hon'ble Supreme Court and granted bail to the petitioner therein after he had undergone total custody of 01 year and 06 months.

8. In the instant case, the veracity of the prosecution case against the petitioner shall be established during the course of the Trial. Admittedly, the petitioner is a first-time offender, in custody since 17.04.2021 and only 06 of the 22 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. The conditions envisaged under Section 37 of the NDPS Act can be relaxed to an extent keeping in view the provisions under Article 21 of the Constitution of India which provides for the right to a speedy Trial and the case of the petitioner can be considered for the grant of bail.

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9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Amit Malik is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present one

11. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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 petitioner from trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

May 08, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No