

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

CRM-M-37413-2021(O&M)

Date of Decision:-18.04.2023

Rajbir Singh @ Bhappi.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Ankur Jain, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.125 dated 13.10.20202 under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Valtaha, District Tarn Taran.

2. The present FIR was registered on the basis of a ruqa sent by ASI Satnam Singh who stated that while he along with his police party had apprehended Rajbir Singh @ Bhappi (petitioner) he could not conduct the search of the accused as he was local rank officer. Thus some investigating officer was sought at the spot. Based on the said information supplied the police party reached the spot and after complying with the provisions of the NDPS Act, the recovery of 700 loose intoxicating tablets was effected from the petitioner. Subsequently the FIR in question came to be registered.

3. The Counsel for the petitioner contends that as per the FSL report intoxicating tablets containing Tramadol Salt of 278.4 grams, which

was marginally above the commercial quantity of 250 grams came to be recovered. There had been non compliance of mandatory provisions of NDPS Act regarding search and seizure. As the petitioner was in custody since the last more than 02 years he was entitled to the grant of bail in terms of the judgment passed by Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Decided on 01.08.2022***, more so when he was was a first time offender and none of the 11 prosecution witnesses had been examined so far.

4. The learned State counsel on the other hand contends that commercial quantity of contraband had been recovered from the petitioner. Therefore the rigors of section 37 of the NDPS Act did not entitle the petitioner to the grant of bail. He however, admits the fact that the petitioner is a first time offender, in custody for more than 02 years and none of the 11 prosecution witnesses had been examined so far.

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

6. 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 aforesaid terms.

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

This Court in the case of **Balraj Singh Vs. 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.

7. In the instant case the petitioner is a first time offender. None of the 11 prosecution witnesses have been examined so far as such the trial is not likely to be concluded anytime soon. As the petitioner is in custody since the last more than 02 years the rigors of Section 37 of NDPS Act can be relaxed to an extent and the petitioner can be granted the concession of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Rajbir Singh @ Bhappi** son of Sh. Jaswant Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner 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 he is not involved in any other crime other than the present one.

10. In addition, the petitioner (or anyone 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

April 18, 2023
Vinay

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