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(218) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32444-2023
Date of Decision: 14.07.2023

KAKKO KAUR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

This 3rd petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.104 dated 06.07.2021 registered under Section 22 of NDPS Act at Police Station Kot Isse Khan, District Moga.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Kakko Kaur (petitioner) wife of Balbir Singh was habitual of selling intoxicating tablets and would be bringing the same to village Daulewala. If a barricading was done, she could be apprehended.

Based on the said information, the present FIR came to be registered and subsequent thereto, the recovery of 410 tablets of Etizolam Mouth Dissolving Tablets ETM 0.5 came to be effected from her.

3. The learned counsel for the petitioner contends that he has been falsely implicated in the present case. The mandatory provisions of Sections

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42 and 50 of the NDPS Act have not been complied in their proper perspective. No independent witness was joined at the time of search and seizure. As he was a first-time offender, in custody since 06.07.2021 and only 03 out of the 14 prosecution witnesses had been examined, he was entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in case of **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.**

4. On the other hand, the learned State counsel contends that commercial quantity of contraband has been recovered from the petitioner. Therefore, the petitioner was not entitled to the grant of regular bail. She, however, does not dispute the custody period undergone by the petitioner as also the fact that the petitioner is a first-time offender and only 03 of the 14 prosecution witnesses had been examined so far.

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

6. 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 aforestated 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.

7. In the instant case, the petitioner is stated to be in custody since 06.07.2021 and only 03 out of the 14 prosecution witnesses have been examined so far. He is also a first-time offender with no other case registered against him. In this situation, the rigors of Section 37 of the NDPS Act can be diluted to an extent in view of the salutary provisions of Article 21 of the

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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.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Kakko Kaur wife of Balbir Singh is ordered to be released on bail subject to her 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 she is not involved in any other crime other than the present case.

10. In addition, the petitioner (or anyone on her behalf) shall prepare an FDR in the sum of Rs.50,000/- 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

14.07.2023

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No