

CRM-M-32532-2023 (O & M)

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

CRM-M-32532-2023 (O & M)
Date of Decision:18.10.2023

Pooran Singh

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Satnam Singh Gill, Advocate, for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in this second petition under Section 439 Cr.P.C is for the grant of regular bail to the petitioner in case bearing FIR No.257 dated 18.07.2020 under Section 15 of the NDPS Act, 1985 registered at Police Station Sadar Dhuri, Sangrur.

2. The brief facts of the case are that secret information was received that Gurpreet Singh (since granted bail vide order dated 02.09.2021 passed in CRM-M-22724-2021, Annexure P-3) and Pooran Singh (petitioner) on the directions of Gurwinder Singh were bringing poppy husk in truck bearing No.PB 13BF 1258 and would sell the same in the area of District Sangrur. If a *nakabandi* was set-up, the said persons could be apprehended.

During the course of investigation, a *nakabandi* was set-up on the link road, Hussanpur-Ranika and a truck bearing No. PB 13BF 1258 was seen coming from village Hassanpur side. The driver of the truck and the

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person sitting on the conductor seat were apprehended. On asking, the driver of the truck disclosed his name as Pooran Singh and the person sitting on the conductor seat disclosed his name as Gurpreet Singh. The recovery of 07 bags containing 18 kgs. poppy husk each (total 1 quintal 26 kgs.) came to be effected.

On investigation, it was found that the truck bearing No. PB 13BF 1258 which had been used in the crime was in the name of accused-Gurwinder Singh. Therefore, the offence under Section 25 of the NDPS Act was added on 22.07.2020.

During further investigation, both the accused were interrogated and on the basis of their disclosure statements, Mohni Singh son of Billu Singh was nominated as an accused in this case on 22.07.2020 and the offence under Section 29 of the NDPS Act was added. Accused-Mohni Singh was arrested on 23.07.2020.

On the completion of the investigation, the report under Section 173 Cr.P.C. was submitted against Pooran Singh (petitioner), Gurpreet Singh and Mohni Singh on 28.12.2020.

On 01.03.2021, Gurwinder Singh who was the owner of the truck surrendered before the Court of the Judicial Magistrate Ist Class, Dhuri and was arrested on 01.03.2021. On the completion of the investigation, the supplementary challan was presented against the accused-Gurwinder Singh in the Court on 22.04.2021.

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

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Sections 42 and 50 of the NDPS Act have not been complied with in their proper perspective. No independent witness was joined at the time of search and seizure. He was in custody for almost 03 years and 03 months since 18.07.2020. None of the 22 prosecution witnesses had been examined so far and therefore, the trial of the present case is not likely to be concluded soon. He was an accused in one more case bearing FIR No.284 of 2018 under Sections 15, 18, 29/61/85 of the NDPS Act, Police Station Nahargarh (M.P.) in which he had been granted bail vide order dated 19.11.2018. A copy of the aforesaid order is taken on record as Mark 'A'. He contends that in view of the judgment of the Hon'ble Supreme Court in the 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 Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023, the petitioner was entitled to the grant of bail having undergone more than 03 years of custody, moreso, when his co-accused, namely, Gurpreet Singh had been granted the concession of bail by this Court vide order dated 02.09.2021 (Annexure P-3).

4. On the other hand, the learned State counsel contends that commercial quantity of contraband has been recovered from the petitioner. He was an accused in another case under the NDPS Act. Therefore, in view of the bar contained under Section 37 of the NDPS Act, he was not entitled to the grant of bail. He, however, concedes that the petitioner was in custody

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since 18.07.2020 and none of the 22 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.

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

7. In **Hasanujjaman & others Versus The State of West Bengal**,
SLP (Crl.) No.(s).3221/2023, decided on 04.05.2023, held as under:-

“1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’) in FIR No.18/2022, dated 09.01.2022, registered at Police Station Islampur, District Murshidabad, West Bengal.

*2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. **They were arrested on the spot and have been in custody for more than one year and four months.***

3. We have heard learned counsel for the parties and carefully perused the record.

4. The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court.

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6. Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.

7. The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.

8. The Special Leave Petition stands disposed of in the above terms.

9. As a result, pending interlocutory application also stands disposed of.

(emphasis supplied)

8. In the instant case, the petitioner is stated to be in custody since 18.07.2020 and none of the 22 prosecution witnesses have been examined so far. 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 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 even though he is an accused in another case under the NDPS Act, moreso, when a co-accused-Gurpreet Singh has been granted the similar relief.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Pooran 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.

10. 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

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writing each time that he is not involved in any other crime other than the case(s) referred to in this order.

11. 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.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

October 18, 2023

sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No