

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-34764-2022 (O&M)
Date of decision: 31.08.2023

Arshpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. I.S. Dhaliwal, Advocate for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

CRM-28161-2022

Application is allowed as prayed for.

Main case:

1. Through this petition, the petitioner seeks regular bail in case bearing FIR No.110 dated 26.10.2021, registered under Sections 21(b), 22(c), 25 of the NDPS Act, at Police Station Bariwala, District Sri Muktsar Sahib.
2. Short reply by way of affidavit dated 31.08.2023 of the Deputy Superintendent of Police, Sri Muktsar Sahib, submitted by the learned State counsel in the Court, is taken on record. Copy of the same has been given to the learned counsel for the petitioner.
3. As per the prosecution version, recovery of 370 tablets Corlividol 100-SE and 60 Tablets of Etizolam 0.5, was effected from the petitioner and co-accused.
4. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that alleged recovery of 370 tablets Corlividol 100-SE falls under the non-commercial quantity; that

though the recovery 60 Tablets of Etizolam 0.5 effected in the present case falls under the commercial quantity, but the fact remains that the petitioner has been in custody for the last 01 year and 09 months and 28 days and that out of 23 prosecution witnesses, only 02 have been examined so far. It is further submitted that there is no other registered or pending case against the petitioner, at least of a similar nature. In support of his contentions, learned counsel relies upon the order dated 01.08.2022 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.5769-2022, titled as 'Nitish Adhikary @ Bapan Vs. State of West Bengal' and the order dated 04.05.2023 passed in Special Leave to Appeal (Crl.) No(s).3221/2023, titled as 'Hasanujjaman & Ors Vs. The State of West Bengal'.

5. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery effected in the present case, falls under commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity. It is further submitted that the some of the material prosecution witnesses are yet to be examined. He does not dispute the custody period of the petitioner.

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

7. Indisputably, the recovery effected in the present case, falls under commercial quantity, but the fact remains that the petitioner has been in custody for the last 01 year and 09 months and 28 days. Remaining 21 prosecution witnesses are yet to be examined. Trial is unlikely to conclude any time soon. There is no other case registered or pending against the petitioner, at least of a similar nature.

8. The Hon'ble Supreme Court in Nitish Adhikary @ Bapan, while granting the benefit of bail to the petitioner therein, has held as under:

“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 afore-stated terms.

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

9. The Hon'ble Supreme Court in Hasanujjaman & Ors's case (supra), while granting the benefit of bail to the petitioner therein, has held as under:

“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; charge-sheet 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.
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.”
10.

In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. Resultantly, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

(HARNARESH SINGH GILL)
JUDGE

31.08.2023
Mangal Singh

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