

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

211

CRM-M-36941-2023 (O&M)  
Date of decision: 04.08.2023

HONEY BASHRA

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Monty Goyal, Advocate for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG Punjab.

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**HARNARESH SINGH GILL, J. (ORAL)**

1. Through this petition, the petitioner seeks regular bail in case bearing FIR No.124 dated 04.08.2021, registered under Sections 22 and 25 of the NDPS Act, at Police Station Doraha, District Ludhiana.
2. As per the prosecution version, recovery of 390 Buprenorphine Injections IP Rexogesic 2 ml. each and 390 glass injection vials labelled as 'Avil' IP, was effected from a shoulder bag near the leg space of the co-driver seat of the car, in which the petitioner and two co-accused were travelling and the petitioner was sitting on the back seat.
3. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that 'Avil' does not fall under the NDPS Act; that the petitioner was sitting on the back seat and was not aware of the alleged contraband; that the petitioner has been in custody since 04.08.2021 and that out of 14 prosecution witnesses, only 01 has been examined so far. It is further submitted that there is no other case registered or

pending 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'.

4. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that the petitioner had specifically been named in the secret information; that the recovery effected from the petitioner and co-accused 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 material prosecution witnesses are yet to be examined. He does not dispute the custody period of the petitioner.

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

6. Indisputably, the recovery effected in the present case, falls under the commercial quantity, but the fact remains that the petitioner has been in custody since 04.08.2021 and the petitioner was sitting on the back seat of the car and the recovery was effected from the shoulder bag near leg space of the co-driver seat. Remaining 13 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.

7. 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.”*

8. 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

04.08.2023  
Mangal Singh

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