

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-43834-2021 (O&M)
Date of Decision: 07.07.2023

HARKIRAT SINGH @ KIRAT

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate
with Mr. Harlove Singh Rajput, Advocate
and Mr. Gurshar Singh Dhillon, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J.

Prayer in the present petition, filed under Section 439 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), is for grant of regular bail to the petitioner in case FIR No.179 dated 28.07.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station City Nawanshahr, District SBS Nagar.

2. Status report by way of an affidavit of Sh. Davinder Singh, P.P.S., Deputy Superintendent of Police, Nawanshahar Sub Division, District Shaheed Bhagat Singh Nagar, on behalf of respondent-State of Punjab, has been filed, which is already on record.

3. Custody certificate dated 22.04.2023 of the petitioner filed by learned State counsel, in the Court has been taken on record vide order dated 24.04.2023.

4. Briefly, the above-said case FIR was registered on the complaint of one Palwinder Singh, ASI, CIA Staff, Nawanshahr, wherein, he has stated that an information was received from Husaan Lal, ASI that he along with the police party had stopped one clean shaven motorcycle rider along with one bag near bypass of Village Sona Maur and since, there was a suspicion regarding some intoxicant object therein; accordingly, he asked to send some competent officer for further action. Thereafter, the Incharge of CIA staff had assigned the duty to the complainant-Palwinder Singh, ASI; whereupon, he along with other fellow employees started towards bypass of Village SonaMaur and Mr. Savinderpal Singh, PPS, Deputy Superintendent of Police, Sub Division Nawanshahr, was also asked to reach at the spot. Upon reaching at the spot, the apprehended person was produced by HussanLal before the complainant/ASI and DSP. After complying with the procedure regarding offer of search etc., said person disclosed his name as Harkirat Singh alias Kirat (petitioner) son of Sukhdev Singh and after carrying out the search of the petitioner/his bag, the following intoxicant injections were recovered :-

“Packing of 5/5 total 55 strips in which 275 injections of Buprenorphine Injection IP LEEGESIC having batch No.DA 267, Mfg. Date MAY-2021, Exp. Date APR-2023, each weighing 2 ML and 275 injections of Avil weighing 10 ml. each of which 225 vaccine batch number 2121087, Mfg. Date MAR-2021, Exp. Date FEB-2024 is recorded and batch number of 50 drug injections is 0421022, Mfg. Date 05-2021, Exp. Date

04-2024 is recorded Exported. Buprenorphine Injections IP LEEGESIC 275 Vaccine Avil 10 ML each.”

Accordingly, the FIR in question was registered and the petitioner was arrested.

5. As per the status report, during interrogation, the petitioner is stated to have disclosed that he is a drug addict and used to purchase the injections from one Satish Kumar, who had told the petitioner that in case, he wanted to buy more injections in his absence, he may obtain the same from his brother Rakesh Kumar as well as his sister Koshal. It was further allegedly disclosed by the petitioner that the recovered intoxicant injections were also bought from the aforesaid three persons namely, Rakesh Kumar, Satish Kumar and Koshal; accordingly, they were also nominated as accused in this case. The status report further reveals that Rakesh Kumar and Koshal were arrested on 29.07.2021 and 95 *buprenorphine injections*, each 2 ml. were recovered from their possession and accordingly, the offence under Section 29 of the NDPS Act was added in this case vide Rapat no.76 dated 29.07.2021. As per the Status report, the report from the Chemical Examiner, Ludhiana, was received on 27.09.2021, which revealed that the contraband recovered falls within the ambit of “commercial quantity.”

6. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR. It is submitted that the alleged recovery was from thoroughfare and no independent witness was joined by the police party. It is further submitted that the search was carried out by ASI Palwinder Singh at the instance of DSP, which is illegal. It is next submitted that the petitioner has been in custody since 28.07.2021 and the investigation in this case is complete as the challan stands presented in the Court on 25.11.2021 and even charges have been framed on 24.03.2022

and out of total 17 witnesses, only 02 witnesses have been examined, so far; thus the trial is likely to take some time. It is also submitted that the other co-accused namely, Satish Kumar, Rakesh Kumar and Koshal, have already been granted bail. It is stated that the petitioner is ready and willing to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly, prayer for grant of regular bail is made.

7. Per contra, learned State counsel opposed the plea of petitioner for grant of regular bail on the ground of seriousness of offence by submitting that contraband recovered from him falls in the category of “commercial quantity”, hence bar under Section 37 of the NDPS Act is attracted. However, it is fairly conceded by learned State counsel that the petitioner is in custody since 28.07.2021; investigation in the case is complete, challan stands presented and charges have also been framed. Learned State counsel also concedes that no other case is pending against the petitioner. It is also not disputed that the other co-accused namely, Rakesh Kumar, Satish Kumar and Koshal, have already been granted bail by this Court.

8. I have heard learned counsel for the parties and perused the paper book as well as status report and custody certificate of the petitioner.

9. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly it is apposite to refer to a few judgments rendered by Hon'ble Supreme Court.

10. The Hon'ble Supreme Court in *Chitta Biswas @ Subhas v. State of West Bengal (Criminal Appeal No. 245 of 2020 dated 07.02.2020)*

observed as under:-

“ xxx

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.

With the aforesaid directions, the appeal stands allowed.”

11. The Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan v.***

State of West Bengal (Special Leave(Crl.) no. 5769 of 2022) held as under:-

“ xxxx

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.”

12. In ***Shariful Islam @ Sarif v. State of West Bengal (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022)***, the Hon'ble Supreme Court held that:-

“ 1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of West Bengal and carefully perused the material available on record.

2. Taking into consideration the fact that the petitioner is reported to be in custody since 27.12.2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near

future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him.

4. The Special Leave Petition stands disposed of on the above terms.

5. Pending application filed in the matter also stands disposed of.”

13. In **Karnail Singh v. State of Odisha (Criminal Appeal no. 2027 of 2022 dated 22.11.2022)**, Hon'ble Supreme Court held as under:-

“The appellant in the present case was only a Khalasi of the vehicle who did not run away while the others ran away and have still not been apprehended. He has been in custody from 21.03.2021 i.e. more than a year and a half.

In view of the aforesaid facts and circumstances, we grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.”

14. The Hon'ble Supreme Court in **Karim Adaldar v. State of West Bengal (Special Leave to Appeal (Crl.) No. 8653 of 2022)** held that:-

“Having heard learned counsel appearing for the parties and keeping in view the period of custody already undergone by the petitioner, and there being no likelihood of completion of trial in the near future, but without expressing any views on the merits of the case, the petitioner is ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of learned Additional Sessions Judge, 6th Court, Barasat, District – North 24 Parganas, West Bengal.”

15. Further, Hon'ble Supreme Court vide judgment dated 25.1.2023 arising out of *SLP No.6690 of 2022*, titled as "*Dheeraj Kumar Shukla Vs. State of Uttar Pradesh*" has granted bail in a case registered under the NDPS Act, where the accused alongwith co-accused was found in possession of 'commercial' quantity of '*Ganja*' and had been behind bars since the last two and a half years while observing that in the absence of any criminal antecedents, the conditions of Section 37 of the NDPS Act could be dispensed with at that stage, particularly when there was delay in conclusion of trial.

16. In this case, the petitioner is in custody since 28.07.2021. Investigation in the case is complete, challan stands presented on 25.11.2021 and even charges have been framed on 24.03.2022. Learned counsel for the petitioner has placed on record the copies of *zimini* orders (Annexure P-3) to contend that out of total 17 witnesses, only 02 witnesses have been examined. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude. Furthermore, co-accused namely, Satish Kumar @ Sonu has been granted anticipatory bail vide order dated 08.10.2021 passed in *CRM-M-32385-2021*, Koshal and Rakesh, have been released on regular bail by this Court vide orders dated 19.05.2022 passed in *CRM-M-36145-2021* and *CRM-M-40959-2021*, respectively (Annexure A-1).

17. In the instant case, the alleged recovery falls under the category of commercial quantity and bar of Section 37 of the NDPS Act is attracted, however, while dealing with Section 37 of the NDPS Act, the Court is not called upon to record a finding of "not guilty" and it is only required to say

that there are reasonable grounds to believe that the accused is not guilty of the offence. In the facts of the present case and on an assessment of material on record, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence. Further, considering the fact that the petitioner is not involved in any other case under the NDPS Act, there is nothing on record to suggest that he is likely to commit an offence under the NDPS Act, while on bail.

18. Keeping in view the aforementioned circumstances and the legal position as indicated above, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

19. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without

any sufficient cause.

20. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.
21. The petition is accordingly disposed of.
22. All pending application(s), if any, shall also stand closed.

July 7th, 2023
gurpreet

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No

(HARSH BUNGER)
JUDGE