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

CRM-M-44636-2021
Date of Decision: 10.05.2023

JASVIR SINGH @ JASSA

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.105 dated 29.04.2021 registered under Section 18 of NDPS Act, 1985 at Police Station SAS Nagar, Mohali.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Jasvir Singh @ Jassa (petitioner) son of Dev Singh who was involved in the business of smuggling of opium would be carrying a huge quantity in his canter bearing No.PB-65-AR-0273. If a *Nakabandi* was set up, then a heavy recovery of opium could be effected from Jasvir Singh @ Jassa.

Based on the aforementioned information, the FIR came to be registered and the petitioner came to be apprehended. He was found in possession of 05 kgs 15 grams of opium which came to be recovered from the

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tool box in front of the adjoining seat of the driver seat of the canter in question.

3. The learned counsel for the petitioner *inter alia* contends that there was non-compliance of Sections 42 and 52 of the NDPS Act, no independent witness was joined at the spot during the course of search and seizure. As the petitioner was in custody since 29.04.2021 only 01 out of the 16 prosecution witnesses had been examined so far, he was entitled to the concession of bail keeping in view 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 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 bail in terms of the restrictions imposed under Section 37 of the NDPS Act. He, however, admits the fact that the petitioner was in custody since 26.05.2020, only 01 out of the 16 prosecution witnesses had been examined so far and the petitioner is a first-time offender.

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.”

7. In the present case, the petitioner is stated to be in custody since 29.04.2021. Only 01 out of the 16 prosecution witnesses have been examined so far. Therefore, the Trial of the present case is not likely to be concluded anytime soon. The petitioner is stated to be a first-time offender. In this view of the matter, the rigors of Section 37 of the NDPS Act can be diluted to an

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extent in view of the salutary provisions of Article 21 of the Constitution of India and the petitioner can be granted the concession of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Jasvir Singh son of Dev 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.

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 he is not involved in any other crime other than the present case.

10. 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

10.05.2023

JITESH

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