2023:PHHC:104887

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

CRM-M-38273-2023 (O & M)
Date of Decision: 11.08.2023

Sunil Kumar

... Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rajesh Nain, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

****

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail to the petitioner in case bearing FIR No.241 dated 04.06.2021 under Section 22(c) of the NDPS Act and Section 269 IPC, Section 51(b) of the Disaster Management Act, 2005 (Section 27-A of the NDPS Act added later on) at Police Station City Tohana, District Fatehabad, Haryana.

2. The brief facts of the case are that while the police party was on patrolling duty, two young boys on a motorcycle came from the side of Maniyana Road and on seeing the police party, suddenly turned their motorcycle, upon which, their motorcycle got switched off. Both the boys tried to hide a red coloured bag kept between them on the motorcycle. They were apprehended and on enquiry, they disclosed their names as Amarjeet alias Chimtu (since granted bail vide order dated 01.05.2023 passed in CRM-

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M-48743-2021) and the pillion rider disclosed his name as Sunil Kumar (petitioner). On a search of the bag kept between the boys, the recovery of 1930 tablets of Tramadol Hydrochloride Tablets 100 Mg. SR came to be effected.

On their disclosure statement, one Satpal Singh (since granted anticipatory bail vide order dated 25.07.2023 passed in CRM-M-23462-2021) was arrayed as an accused.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act had not been complied with in their proper perspective. No independent witness was joined at the time of search and seizure. As he was a first-time offender, in custody since 04.06.2021 and only 01 out of the 14 prosecution witnesses had been examined, the trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail 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,*** moreso when two of his co-accused namely, Amarjeet @ Chimtu and Satpal had been granted the concession of either regular bail or

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anticipatory bail vide orders dated 01.05.2023 and 25.07.2023 (Annexures P-1 and P-2 respectively).

4. On the other hand, the learned State counsel contends that commercial quantity of contraband had been recovered from the petitioner. Therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He, however, concedes that the petitioner was a first time offender, in custody since 04.06.2021 and only 01 out of the 14 prosecution witnesses had been examined so far as also the fact that two co-accused, namely Amarjeet @ Chimtu and Satpal had been granted the concession of either regular bail or anticipatory bail.

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***

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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 ***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.

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> ***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.*
>
> *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 04.06.2021 and only 01 out of the 14 prosecution witnesses have been examined so far. He is also a first-time offender with no other case registered against him. 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

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case of the petitioner can be considered for the grant of bail, moreso when two of his co-accused namely, Amarjeet @ Chimtu and Satpal have been granted the concession of either regular bail or anticipatory bail vide orders dated 01.05.2023 and 25.07.2023 (Annexures P-1 and P-2 respectively).

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Sunil Kumar 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 writing each time that he is not involved in any other crime other than the present case.

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

August 11, 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No

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