

CRM-M-40495-2023 (O&M)

-1-

(109+237) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40495-2023 (O&M)
Date of Decision: 21.12.2023

PINDER SINGH @ PHINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kanwaljeet Singh, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

CRM-53272-2023

The present application has been filed by the applicant-petitioner
for placing on record Annexure A-1.

For the reasons mentioned in the application, the same is
allowed and Annexures A-1 is taken on record.

CRM-M-40495-2023

The prayer in the present petition under Section 439 Cr.P.C is for
the grant of regular bail in case bearing FIR No.238 dated 16.05.2021
registered under Sections 21, 22, 25 of the NDPS Act, (Section 29 of the
NDPS Act added later on) at Police Station City Barnala, District Barnala.

2. Lovepreet Singh @ Gora son of Jagwant Singh and Pinder Singh
@ Phinder Singh (petitioner) son of Malkit Singh came to be apprehended
with 10 grams of heroin. On the basis of their disclosure statement, they got

recovered a further 20 grams of heroin along with drug money to the tune of Rs.3,55,000/-.

On 18.05.2021, the petitioner made a disclosure statement on the basis of which, he got recovered a further 270 grams of heroin.

On the basis of the respective disclosure statements, Gaurav @ Sawan Golu son of Sukhwinder Singh, Kuldeep Singh and Rajwinder Singh @ Rana son of Sukhdev Singh were nominated as accused in the present case vide DDR No.76 dated 18.05.2021.

On 20.05.2021, accused Lovepreet Singh @ Gora got recovered 25 grams of heroin. Thereafter, on the basis of the disclosure statement made by the accused, Mandeep Singh @ Mani son of Malkit Singh, Gurmit Singh, Yadwinder Singh @ Yadu son of Baljit Singh and Uncle were nominated as accused in the present case vide DDR No.34 dated 21.05.2021.

On 22.05.2021, at the instance of Lovepreet Singh @ Gora, Manpreet Singh @ Mani and Yadwinder Singh @ Yadu were apprehended. On 24.05.2021, Gaurav @ Sawan Golu was arrested in the present case. Further, on 25.05.2021, Mandeep Singh @ Mani suffered his disclosure statement and got recovered 10 grams of heroin. Further, on 25.05.2021, Yadwinder Singh @ Yadu got recovered 10 grams of heroin.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. There was violation of mandatory provisions of the Act regarding search and seizure including Sections 42 and 50. The petitioner was in custody since 16.05.2021 and only 09 out of the 22 prosecution witnesses had been examined so far. Therefore, the Trial of the present case was not likely to be concluded anytime soon. In

one other case registered against the petitioner bearing FIR No.56/2014 11.06.2014 U/s 22/61/85 NDPS Act, Police Station Mukhtsar Sadar, he had been convicted. He, therefore, prays that 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*, the petitioner was entitled to the concession of bail.

4. An affidavit dated 21.12.2023 by way of an affidavit of Satvir Singh, PPS, Deputy Superintendent of Police, Sub Division Barnala, District Barnala has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that the petitioner is a convict in one other case under the NDPS Act. Therefore, he was not entitled to the concession of bail. He, however, concedes that the petitioner was in custody since 16.05.2021 and only 09 of the 22 prosecution witnesses had been examined so far.

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 **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.*

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. Admittedly, in ‘Nitish Adhikary @ Bapan’ (supra) and ‘Hasanujjaman & others’ (supra), the accused therein had been granted the concession of bail by the Hon’ble Supreme Court after they had undergone approximately one and a half years of custody. They were also first-time offenders as is borne out from the orders.

9. In the present case, the petitioner has undergone more than two and a half years of custody. In the one other case registered against him, he has been convicted. In view of the fact that the petitioner has undergone a substantial period of custody, 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 case of the petitioner can be considered for the grant of bail.

10. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Pinder Singh @ Phinder Singh son of Malkeet 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.

11. 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 cases mentioned in this order.

CRM-M-40495-2023 (O&M)

-7-

12. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- 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.

13. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

21.12.2023

JITESH

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