

219

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40374-2023 (O/M)

Date of decision : 22.09.2023

Vikram Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Talwinder Singh, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Additional A.G. Punjab.

-. -

-. -

HARSH BUNGER, J.

1. Petitioner (Vikram Singh) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No. 169 dated 15.12.2021, registered under Section 15 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') (Section 29 of NDPS Act added later on) at Police Station Khuian Sarwar, District Fazilka.

2. The first petition filed under Section 439 of the Code of Criminal Procedure (CRM-M-45080-2022) by petitioner was withdrawn vide order dated 22.05.2023.

3. Status report by way of affidavit dated 11.09.2023 of Mr. Arun Mundan, PPS, Deputy Superintendent of Police, Sub Division Abohar,

District Fazilka, has been filed on behalf of State of Punjab, which is already on record.

4. Custody certificate dated 21.09.2023 of the petitioner has been filed by learned State counsel in Court today itself which is taken on record subject to all just exceptions.

5. Briefly, the aforesaid case FIR was registered on the basis of a ruqa sent by ASI Swaran Singh, wherein it was stated that he alongwith other police officials was on patrolling duty in official vehicle Bolero bearing registration No. PB-22-R0872 in the area of Abohar-Ganganagar Main Highway near Ganpati Vexing Plant, he signalled a big truck (bearing registration No. RJ07-GB-0222), coming from Ganganagar Rajasthan side, to stop,. The said truck was being driven by a young boy. On being asked, the driver told his name Vikram Singh son of Sehtan Singh. The driver was found perplexed whereupon ASI Swaran Singh got suspicious that either the driver is having some intoxicant substance or same is in the said truck. Thereafter, he (ASI Swaran Singh) sent the information to the police station concerned for sending a competent officer to conduct search of the truck. On receiving the information, SI/SHO Amrinder Singh, Police Station Khuian Sarwar alongwith other police officials with original Rapat No. 37 dated 14.12.2021, reached at Vexing Plant, Abohar-Ganganagar Main Road where ASI Swaran Singh alongwith police officials and also the truck driver was present. The SI/SHO inquired about the antecedents of the driver, who revealed his name as Vikram Singh (petitioner) and after introducing himself to the driver (petitioner), he was informed that there was suspicion

of some intoxicant substance with driver or in the truck and accordingly, the search of the driver as well as of the truck is to be conducted and the driver was made aware of his legal right of getting himself searched as well as search of the truck in the presence of some Gazetted Officer or a Magistrate, whereupon the petitioner replied that he wanted to get his search as well as the search of his truck conducted from a Gazetted Officer, whereupon the non consent memo was prepared and Shri Sandeep Kumar, PPS, DSP, Sub Division Abohar City was requested to come at the spot.

Upon arrival of DSP Sandeep Kumar, he was made aware of the circumstances and thereafter, the said DSP introduced himself to the driver (petitioner) and also made aware of his legal right of search, whereupon the petitioner stated that he wanted to get his search as well as the search of his truck conducted from the DSP and after following the procedure, the search was conducted.

Upon search of the truck, 5 plastic bags were recovered near the back lid of driver side (upper side of coal), which were checked and poppy husk was found in the said bags. Upon weighing, each bag weighed 20 kg and accordingly, 100 kg poppy husk was recovered. The recovered intoxicant substance was taken into police possession and samples were drawn.

Upon personal search of the petitioner, currency notes amounting to Rs. 450/- and one mobile phone were recovered. In the aforesaid circumstances, the petitioner was arrested.

6. As per status report, Vikram Singh (petitioner) was arrested in the instant case on 15.12.2021. During questioning, the petitioner disclosed that he was to deliver the recovered contraband to Tarsem Singh alias Pamma. In this way, the name of said Tarsem Singh alias Pamma was nominated in this FIR, vide DDR No. 24 dated 17.12.2021. During the inquiry, it also came that Shambhu Singh is the owner of the offending truck.

After completion of investigation, the challan in FIR was filed in the concerned Court on 20.05.2022 and charges were framed on 16.07.2022. Now, the case before the trial Court is at the stage of prosecution evidence.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case FIR No. 169 dated 15.12.2021. It is submitted that petitioner has nothing to do with the alleged recovery of contraband and the same was not recovered from the conscious possession of the petitioner. It is submitted that the recovery was effected from the rear deck of truck which is an open space and is accessible to anyone. It is submitted that the petitioner is not the owner of the truck and he has no link with the recovered contraband. It is submitted that the petitioner being resident of Rajasthan does know Punjabi and Gurmukhi script and all the proceedings done by the police was in Punjabi language. It is submitted that the petitioner has no link with said Tarsem Singh. While referring to offer memo, it is contended that there was violation of provisions of Section 50 of the NDPS Act.

Learned counsel for the petitioner contends that the petitioner is in custody since 15.12.2021 in this case and no other case is pending against him. It is stated that investigation qua the petitioner is complete and challan stands presented, thus trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner states that co-accused of petitioner, namely, Tarsem Singh alias Pamma has already been granted regular bail by a coordinate Bench of this Court, vide order dated 13.04.2023, passed in CRM-M-57254-2022 (Annexure P-4). Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

8. Per contra, learned State counsel has reiterated the contents of the status report and submitted that huge quantity of intoxicant substance has been recovered in this case. He submits that 5 plastic bags, containing 20 kg. poppy husk in each bag, were found lying under polythene near back lid on driver side. The total weight of the poppy husk was found to be 100 kg. Thus, the recovery of intoxicant substance in this case comes under the category of 'commercial' quantity, accordingly, bar under Section 37 of NDPS Act is attracted. Therefore, it is prayed that the petition be dismissed.

However, learned State counsel has not disputed the fact that the petitioner has been in custody since 15.12.2021 and also that the charges have been framed in this case and trial is going on and out of total 18 prosecution witnesses, only 1 prosecution witness has been examined. It is also not disputed that there is no other case against the petitioner. Learned State counsel also concedes that co-accused Tarsem Singh alias Pamma has already been granted regular bail by a co-ordinate Bench of this Court, vide order dated 13.04.2023, passed in CRM-M-57254-2022 (Annexure P-4).

9. I have heard learned counsel for the parties and perused the paper book as well as the status report with their able assistance.

10. 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 the judgments rendered by Hon'ble Supreme Court.

11. The Hon'ble Supreme Court in *Chitta Biswas alias Subhas v. State of West Bengal* (Criminal Appeal No. 245 of 2020 dated 07.02.2020) observed as under:-

“ xxxxxx

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.”

12. The Hon'ble Supreme Court in *Nitish Adhikary alias 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 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 1 year and 7 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.”

13. In *Shariful Islam alias 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.”

14. 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.”

15. 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.”

16. Coming to the case in hand, the petitioner is a young man of about 30 years of age, who is stated to be resident of Rajasthan. The petitioner has been in custody since 15.12.2021 and as per the custody certificate, the petitioner has undergone total custody of 1 year, 9 months, 7

days (as on 21.09.2023) and there is no other case against the petitioner. The investigation in this case is complete, charges have been framed and the trial is going on. Out of 18 prosecution witnesses, only 1 prosecution witness has been examined. Thus, the trial is likely to take some time to conclude. Moreover, the co-accused of the petitioner, namely, Tarsem Singh alias Pamma has already been granted regular bail by a coordinate bench of this Court, vide order dated 13.04.2023, passed in CRM-M-57254-2022.

17. Although, the alleged recovery in this case falls under the category of commercial quantity and bar of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted, however, while dealing with Section 37 of the Narcotic Drugs and Psychotropic Substances 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 Narcotic Drugs and Psychotropic Substances Act, there is nothing on record to suggest that he is likely to commit an offence under the Narcotic Drugs and Psychotropic Substances 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.

(HARSH BUNGER)
JUDGE

22.09.2023.
sjks

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