

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-41203-2023 (O&M)
Date of decision: 28.08.2023

DEVI LAL

...Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

Ms. Ankita Ahuja, AAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Through this petition, the petitioner seeks regular bail in case bearing FIR No.92 dated 09.03.2020, registered under Sections 15 and 27-A of the NDPS Act, at Police Station Sadar Fatehabad, District Fatehabad.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that, though, the extent of contraband i.e. 100 kg *poppy straw* recovered in the present case, falls under commercial quantity, yet the fact remains that the petitioner has been in custody since 09.03.2020; that the said recovery was effected from a car, which was being driven and owned by co-accused, namely, Krishan Kumar and the petitioner was a co-passenger; that Krishan Kumar has already been granted the concession of regular bail by this Court vide order dated 08.08.2023 and that out of 17 prosecution witnesses, only 7 witnesses have been examined so far. It is

further submitted that there is no other case registered or pending against the petitioner, at least of a similar nature.

In support of his contentions, learned counsel relies upon the order dated 01.08.2022 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.5769-2022, titled as 'Nitish Adhikary @ Bapan Vs. State of West Bengal'.

On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that heavy recovery i.e. 100 kg *poppy straw* effected in the present case, falls under commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity. She, however, does not dispute the custody period of the petitioner. She further submits that the recovery was effected from a car, in which the petitioner was a co-passenger and thus, is liable for the same; that the petitioner is a habitual offender and facing three more cases under the Indian Penal Code, though acquitted in the said cases. It is further submitted that material witnesses are yet to be examined and thus, the petitioner be not granted the concession of regular bail.

I have heard the learned counsel for the parties.

Indisputably, extent of contraband recovered in the present case, falls under commercial quantity, but the fact remains that the petitioner has been in custody since 09.03.2020. Recovery has already been effected, from the car, which was being driven by the co-accused. Petitioner was the co-passenger of the said car. Co-accused has since been enlarged on bail. The prosecution witnesses are yet to be examined.

Trial is unlikely to conclude any time soon. There is no other case registered or pending against the petitioner, at least of a similar nature.

The Hon'ble Supreme Court in Nitish Adhikary @ Bapan, while granting the benefit of bail to the petitioner therein, has held as under:

“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.”

In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. Resultantly, without commenting anything on the merits, lest it should prejudice the

case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

28.08.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No