

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

**CRM-M-43937-2022
Date of Decision: 24.01.2023**

Ajaib Singh

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J.

This 2nd petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.145 dated 26.09.2020 registered under Sections 22-C and 29 of the NDPS Act, at Police Station Jakhal, District Fatehabad.

2. The brief facts of the case are that while the police party was on patrolling duty near Village Nathuwal Stadium, two people were seen coming on a motor cycle who tried to turn around the same. On being apprehended, the persons sitting behind was seen carrying a white polythene bag in his hand. The driver of the motor cycle disclosed his name as Ajaib Singh (petitioner) whereas the person sitting pillion disclosed his name as Tek Singh. The recovery of 260 strips of Tramadol Hydrochloride (2600 tablets) came to be effected from them.

3. The learned counsel for the petitioner contends that there is a violation of Section 42 and 50 of the NDPS Act. No independent witness was joined during the course of search and seizure. The conscious possession of the petitioner over the alleged recovery would be a matter of adjudication during Trial. Since the petitioner was in custody since 26.09.2020, none of the 18 prosecution witnesses had been examined so far and he was a first time offender, he was entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in 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, having undergone almost 02 years of custody.

4. On the other hand, the learned State counsel contends that commercial quantity of contraband has been recovered from the petitioner and his co-accused. In view of the provisions of Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He, however, does not dispute the period of custody undergone by the petitioner as also the fact that the petitioner is a first-time offender.

5. I have heard the learned counsel for 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.”

This Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022** has followed the dictum laid down by the Hon'ble Supreme Court and granted bail to the petitioner therein after he had undergone total custody of 01 year and 06 months.

7. In the present case, the petitioner has been in custody since 26.09.2020 and as such has undergone 02 years and 04 months of actual custody. None of the 18 prosecution witnesses have been examined so far and he is a first time offender. In view of the custody period already undergone by the petitioner, the provisions of Section 37 can be diluted to an

extent in view of the salutary provisions contained under Article 21 of the Constitution of India which provides for the Right to a Speedy Trial. Therefore, the case of the petitioner can be considered for the grant of concession of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Ajaib 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 cases mentioned in this order.

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

24.01.2023
sukhpreet

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