

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

220

**CRM-M-42945 of 2023
Date of Decision: 11.12.2023**

Naresh Kumar Jain

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Nikhil Ghai, Advocate and
Mr. P.S. Bindra, Advocate
for the petitioner.

Mrs. Palika Monga, DAG, Haryana.

Ms. Puneeta Sethi, Senior Standing Counsel
for respondent No.2-NCB.

VIKAS BAHL, J (ORAL)

1. This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in complaint No.03/2021 dated 02.07.2021, (Annexure P-1) under Sections 8, 21, 22, 27-A, 28 and 29 of the NDPS Act, 1985, registered at Police Station Central Bureau of Narcotics Janak Puri, New Delhi.

2. Brief facts of the present case are that a specific information was received on 29.06.2021 by Parveen Dhull, Inspector working in the office of Superintendent Preventive and Intelligence Cell, Central Bureau of Narcotics, New Delhi to the effect that one person namely Sachin was indulging in an illegal business of narcotic and psychotropic medicines and that he had kept the said medicines without bills for doing illegal business in his house and accordingly, a raid was conducted and huge quantity of the

said medicines was recovered from the house of Sachin. The details of the said medicines recovered, has been given in paragraph 3 of the complaint dated 02.07.2021 (Annexure P-1). Sachin was arrested and his statement under Section 67 of the NDPS Act was recorded and in his statement, he has stated that the medicines were supplied to him by Ankur Garg, the medical representative (MR) of M/s Modi Mundi Pharma, whose mobile number was 75038-30880. It has further been recorded in the said statement (page 27 of the complaint) that certain narcotic drugs/medicines were supplied to him by one Ashish and the contact number of the said Ashish was 94562-30620 and rest of the recovered medicines were supplied by M/s Mahavir Pharmaceuticals and contact number of M/s Mahavir Pharmaceuticals was 92120-72018. In pursuance of the said statement, Ankur Garg and Ashish were arrested. A raid was conducted in the premises of M/s Mahavir Pharmaceuticals which was a proprietorship of Yogender son of Chander Bhan and during the said raid, the present petitioner was found in the premises of M/s Mahavir Pharmaceuticals and from the said premises, several medicines and injections were recovered, the details of which have been given in paragraph 13 of the complaint. It was verified during the course of investigation that the said M/s Mahavir Pharmaceuticals had valid drug licences (Annexures P-2 and P-3). Yogender who was stated to be the proprietor of M/s Mahavir Pharmaceuticals, has been granted the benefit of anticipatory bail, vide order dated 05.05.2023 passed by the Additional Sessions Judge, Jhajjar and his statement under Section 67 of the NDPS Act was also recorded. The investigation in the present case has been completed and the challan has been filed before the trial Court and the charges have already been framed and there are 24 witnesses, none of whom have been examined and the case is now fixed for 16.01.2024 for prosecution

evidence. Co-accused Ashish has been granted bail by a Co-ordinate Bench of this Court in CRM-M-38557-2023, vide order dated 04.09.2023 and Ankur Garg has also been granted regular bail, vide order dated 29.05.2023 passed by the Additional Sessions Judge, Jhajjar.

3. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 01.07.2021 and there are 24 witnesses, none of whom have been examined and thus, the trial is likely to take time. It is submitted that the petitioner is not involved in any other case and the previous bail application of the petitioner was dismissed as withdrawn on 09.12.2022, at that stage with liberty to file an application before the trial Court for regular bail. It is further submitted that after the passing of the said order by the High Court, the petitioner had sought regular bail before the trial Court but the trial Court had rejected the said bail application, vide order dated 21.07.2023 (Annexure P-10) and thus, the petitioner has filed the present second regular bail petition before this Court. It is submitted that the trial has not made much progress as no witness has been examined in spite of the fact that the petitioner has been in custody for more than 2 years and 5 months and that further incarceration would be violative of the right of the petitioner enshrined under Article 21 of the Constitution of India. Learned counsel for the petitioner has relied upon various orders of the Hon'ble Supreme Court, wherein, solely on the basis of the custody period, the concession of bail has been granted. Reliance has also been placed upon an order of the Hon'ble Division Bench of this Court in **CRM-3773-2019 in CRA-D-198-DB-2017** in case titled as **"Bhupender Singh Vs. Narcotric Control Bureau"**.

4. Learned counsel for the petitioner has further submitted that the petitioner has a good case on merits. It is submitted that the secret

information was against Sachin and not against the present petitioner and recovery of narcotic and psychotropic medicines is initially from the premises of Sachin. It is submitted that even Sachin has not named the present petitioner but has named Ankur Garg and Ashish and M/s Mahavir Pharmaceuticals as the persons/company who have been supplying narcotic medicines which have been recovered from Sachin. It is submitted that the said Ankur Garg and Ashish have been granted bail and that the case of the petitioner is on a better footing than that of Ankur Garg and Ashish as the petitioner has not been named by Sachin from whom the recovery is effected. It is further submitted that the premises of M/s Mahavir Pharmaceuticals as per the case of the prosecution, was also raided and narcotic and psychotropic medicines/injections were recovered from the said premises but there are valid drug licenses (Annexures P-2 and P-3) in the name of Yogender (co-accused) with respect to the said premises. It has been highlighted that M/s Mahavir Pharmaceuticals is a proprietorship of Yogender and even the said premises is stated to be taken on rent by M/s Mahavir Pharmaceuticals through its proprietor Yogender and regarding the same, reference has been made to the agreement dated 08.07.2020 and it is submitted that the petitioner is neither a signatory to the same, nor a tenant, nor the owner of the said premises. It is further argued that the statement of the said Yogender has been recorded under Section 67 of the NDPS Act and reference to the said statement has been made in paragraph 23 (page 49) of the complaint (Annexure P-1) to highlight that the said Yogender has accepted that he had supplied the medicines without bills to the prime accused Sachin and a fake supply bill was generated in computer in the name of the hospitals. It is argued that the said Yogender has been granted the benefit of anticipatory bail, vide order dated 05.05.2023 passed by

Additional Sessions Judge, Jhajjar and a copy of the said order has been handed over to this Court during the course of arguments and the same has been taken on record as Mark 'A'. It is submitted that the case of the petitioner is on a better footing than that of Yogender and thus, the petitioner deserves the concession of regular bail. The order granting concession of regular bail passed in favour of Ankur Garg has also been supplied during the course of arguments and the same is taken on record as Mark 'B'. It is submitted that the statements of several proprietors including that of Chander Gupta proprietor of M/s Laxmi Medical Hall, Santosh Kumar proprietor of M/s AS Pharma, Navdeep Jindal proprietor of M/s MS Jindal and a large number of other persons who had supplied medicines to M/s Mahavir Pharmaceuticals along with the bills was recorded during the course of investigation and it was found that the said supplies were legal and that none of the said suppliers have been made an accused in the present case. It is further submitted that the recovery in the present case has already been effected and no purpose would be served by keeping the petitioner in further incarceration.

5. Learned counsel for respondent No.2, on the other hand, has opposed the present petition for grant of regular bail and has submitted that recovery of narcotic and psychotropic medicines was made from M/s Mahavir Pharmaceuticals on 01.07.2021. It was the petitioner who was apprehended at the spot. It is further submitted that during investigation, on the basis of CDR of the mobile number recovered from the possession of the petitioner, it has been revealed that the petitioner and the co-accused Sachin were in constant touch with each other, which shows that the petitioner is also involved in the illegal business of narcotics trade. It is submitted that although the drug license is in the name of M/s Mahavir

Pharmaceuticals in which it is mentioned that Yogender (co-accused) is the proprietor but during investigation, it has been found that even the present petitioner has 50% share in the firm i.e. M/s Mahavir Pharmaceuticals. It is submitted that the supply of medicines without bills has been done from M/s Mahavir Pharmaceuticals to the said Sachin and since the petitioner also has 50% share in the business of M/s Mahavir Pharmaceuticals, thus, he and Yogender both are responsible for the working of M/s Mahavir Pharmaceuticals. It has further submitted that the delivery challan No.4587 dated 29.06.2021 i.e. the date of seizure from Sachin, was also found in the whatsapp chat of mobile No.92120-72018, which was seized from the petitioner and that the said mobile number was also mentioned in the letter head of M/s Mahavir Pharmaceuticals which also shows the active involvement of the petitioner. It is submitted that the recovery from Sachin was of commercial quantity and thus, bar under Section 37 would apply. It is further submitted that the petitioner in his statement recorded under Section 67 has admitted that Yogender had not come to the shop for the last two months and he has 50% share in the business of M/s Mahavir Pharmaceuticals. It is further submitted that as far as co-accused Ankur Garg and Ashish are concerned, no recovery has been effected from them whereas recovery has been effected from the premises of M/s Mahavir Pharmaceuticals in which the petitioner has 50% share. It is thus submitted that the petitioner does not deserve the concession of regular bail.

6. Learned counsel for the petitioner, in rebuttal, has submitted that the mobile No.92120-72018 is not in the name of the petitioner. It is further submitted that the statement of the petitioner recorded under Section 67 of the NDPS Act is not admissible in evidence.

perused the paper-book.

8. In the present case, the petitioner has been in custody since 01.07.2021 (more than 2 years and 5 months) and the investigation is complete and there are 24 witnesses, none of whom have been examined and thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. It has been repeatedly observed by the Hon'ble Supreme court that in a case where the conclusion of trial is likely to take time and the accused has undergone a substantial period of custody and the accused has clean antecedents, then the said accused deserves the concession of regular bail even in cases in which the bar under Section 37 of the NDPS Act is attracted. Reference in this regard may be made to the **order dated 04.05.2023 passed in Special Leave to Appeal (Crl.) No(s).3221/2023 in case titled as Hasanujjaman and others Vs. The State of West Bengal**, in which it was observed as under:-

“xxx xxx xxx xxx. 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.”

9. A perusal of the above order would show that in the abovesaid case, the Hon'ble Supreme Court was pleased to grant regular bail to the petitioners therein in a case where the bar under Section 37 of the NDPS Act applied, after taking into consideration the fact that the custody of the petitioners therein was one year and four months and the investigation had been completed and the conclusion of the trial would take time.

10. The Hon'ble Supreme Court of India in **Special Leave to Appeal (Crl.) No.5769/2022** titled as "**Nitish Adhikary @ Bapan Vs. The State of West Bengal**", vide order dated 01.08.2022, was pleased to observe 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 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 aforesaid terms.

Pending application(s), if any, shall stand disposed of."

11. A perusal of the said order would also show that the said case was under the NDPS Act and the provisions of Section 37 of the NDPS Act were also mentioned in the same and the bail was granted primarily by considering that the petitioner (therein) had undergone custody for a period of 01 year and 07 months and only one witness had been examined and that the petitioner (therein) did not have any criminal antecedents.

12. Hon'ble Supreme Court in **Criminal Appeal No.245/2020** titled as "**Chitta Biswas Alias Subhas Vs. The State of West Bengal**", vide order dated 07.02.2020, was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately (Date of arrest was 21.07.2018 and order granting bail was dated 07.02.2020). The relevant portion of the said order dated **07.02.2020** is as under:-

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

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."

13. In another case i.e., **Criminal Appeal No.1169 of 2022** titled as "**Gopal Krishna Patra @ Gopalrusma Vs. Union of India**", vide order dated **05.08.2022**, the Hon'ble Supreme Court was pleased to observe as under:-

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and

the length of custody undergone by the appellant, in our view the case for bail is made out.

We therefore, direct that:

(a) The appellant shall be produced before the Trial Court within five days from today.

(b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.

(c) The appellant shall not in any manner misuse his liberty.

(d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

14. A perusal of the above-said order would show that in the said case also the custody was of approximately 2 years, 1 month and 17 days and the case was under the NDPS Act and primarily, considering the longevity of the custody period, concession of bail was granted to the petitioner (therein).

15. The Hon'ble Supreme Court in case titled as "**Mohammad Salman Hanif Shaikh Vs. The State of Gujarat**, vide order dated 22.08.2022 passed in **Special Leave to Appeal (Crl.) No.5530-2022** was pleased to observe as under: -

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

16. The above-said case was also a case under the NDPS Act and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the petitioner (therein) was of commercial quantity. The Hon'ble Supreme Court had observed that the concession of bail was being granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

17. The Hon'ble Division Bench of this Court in **CRM-3773-2019 in CRA-D-198-DB-2017**, vide a detailed judgment dated 12.01.2022, had also held that in case, the accused person is able to make out a case within the parameters of Article 21 of the Constitution of India on the basis of period of custody, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act.

18. A Coordinate Bench of this Court vide **order dated 24.04.2023 passed in CRM-M-19626-2022** titled as **Roop Singh Vs. State of Punjab** has granted the concession of regular bail in a case involving recovery of commercial quantity of poppy husk where the custody was for a period of 1 year, 6 months and 26 days on the ground of long incarceration of the accused person being in violation of right of the accused for speedy trial enshrined under Article 21 of the Constitution of India.

19. In addition to the above, it would also be relevant to note that in the present case, the secret information was received against co-accused Sachin and not against the present petitioner and the initial recovery of commercial quantity of narcotic and psychotropic medicines is from the premises of the said Sachin. Sachin in his disclosure statement had named Ankur Garg and Ashish and M/s Mahavir Pharmaceuticals to be the persons/company who had supplied the said tablets/medicines without bills

to him. The said Sachin had not specifically named the present petitioner in the said statement. Abovesaid Ankur Garg has been granted the concession of regular bail, vide order dated 29.05.2023 passed by the Additional Sessions Judge, Jhajjar which has been taken on record as mark 'B'. A perusal of the said order would show that as per the case of the prosecution, there were text messages and telephonic conversations between Sachin and the said Ankur Garg, who has been granted the concession of regular bail. Similarly, Ashish has also been granted the concession of regular bail by a Co-ordinate Bench of this Court, vide order dated 04.09.2023 passed in CRM-M-38557-2023. Even a perusal of the said order would show that there were text messages and telephonic conversations between said Ashish and Sachin and the said Ashish was in custody for a period of one year and 11 months. It is the case of the prosecution that the premises of M/s Mahavir Pharmaceuticals was raided on 01.07.2021 and medicines and injections were recovered from the said premises. During the investigation, it was found that the said firm had valid drug licenses, copies of which have been annexed with the petition as Annexures P-2 and P-3. It has been highlighted on behalf of the petitioner that the said licenses have been issued in the name of M/s Mahavir Pharmaceuticals, which show that the proprietor of the said firm is Yogender and not the petitioner and even the agreement dated 08.07.2020 (Annexure P-7) by virtue of which the said premises has been taken by M/s Mahavir Pharmaceuticals from one Rajiv Sharma, has also been entered into (on behalf of M/s Mahavir Pharmaceuticals) by the said Yogender and the petitioner is not a signatory to the same. It is also the case of the petitioner that the statement of the said Yogender has been recorded under Section 67 of the NDPS Act and reference to the said statement has been made in paragraph 23 (page 49) of

the complaint (Annexure P-1) to highlight that the said Yogender has accepted that he had supplied the medicines without bills to the prime accused Sachin. The said Yogender has been granted anticipatory bail, vide order dated 05.05.2023 passed by Additional Sessions Judge, Jhajjar (taken on record as mark 'A'). The question as to who is the person, who is in actual control of M/s Mahavir Pharmaceuticals would be finally adjudicated during the course of trial and this Court does not wish to give any final opinion with regard to the same.

20. From the above said facts, it is apparent that apart from the petitioner being in custody for a period of more than two years and five months and there being 24 witnesses, none of whom have been examined and thus, the trial is likely to take time, and also the fact that the petitioner is not involved in any other case, the petitioner has several arguable points, which would be finally adjudicated during the course of trial and thus, the petitioner deserves the concession of regular bail.

21. Keeping in view the above-said facts and circumstances as well as the law laid down in the above-said judgments, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

- a). The petitioner will not tamper with the evidence during the trial.
- b). The petitioner will not pressurize / intimidate the prosecution witness(s).
- c). The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

- d). The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- e). The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

22. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

23. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

11.12.2023

D.Bansal

(VIKAS BAHL)
JUDGE

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