

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

213

CRM-M-44963-2023 (O&M)
Date of decision: 15.09.2023

Lucky Kang @ Lucky

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Virendra Pratap Singh, Advocate for the petitioner.

Mr. Hakam Singh, AAG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

1. Prayer in this third petition is for grant of regular bail to the petitioner in case bearing FIR No.136 dated 28.05.2021, registered under Section 21(c) of the NDPS Act, at Police Station Gate Hakima Amritsar City, District Amritsar.
2. As per the prosecution version, recovery of 263 grams of Heroin has been recovered from the right pocket of the petitioner.
3. Learned counsel for the petitioner submits that as per the FIR, the alleged recovery of 263 grams of Heroin was effected from the petitioner but as per the FSL report it is Tramadol Hydrochloride intoxicant powder; that at the time of registration of the present FIR, the petitioner was 18 years old; that though the alleged recovery effected in the present case, fall under the commercial quantity, yet the fact remains that the petitioner has been in custody for the last 02 years and 03 months and out of 17 prosecution witnesses, 11 are yet to be examined and that the petitioner has been involved

in FIR No.134 dated 27.05.2021 under Sections 21-B, 29 of the NDPS Act, wherein he was indicted, after his arrest in the present case, on the disclosure statement of co-accused Rahul, from whom non-commercial quantity of contraband was recovered.

4. In support of his contentions, learned counsel relies upon the order dated 18.07.2023 passed by the Hon'ble Supreme Court in Special Leave Petition (Crl.) No.4637/2023, titled as 'Subhabrata Roy @ Bapi Roy @ Roy Bapi Vs. State of West Bengal', vide which the appellant therein who had as many as 19 cases, including 02 cases under the NDPS Act, registered or pending against him, has since been granted the benefit of bail. It is further submitted that in the said case, trial was at the fag end whereas in the present case, some of the witnesses are yet to be examined.

5. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery effected from the petitioner falls under the commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity. It is further submitted that the petitioner is a habitual offender and that material prosecution witnesses are yet to be examined.

6. I have heard the learned counsel for the parties.

7. Though the recovery of contraband effected in the present case, is commercial quantity, yet the fact remains that the petitioner has been in custody for the last 02 years and 03 months and that some of the prosecution witnesses are yet to be examined. Trial of the case would take time to conclude. In another case under the NDPS Act, the petitioner was indicted,

after his arrest in the present case, on the disclosure statement of co-accused and the recovery in that case was non-commercial.

8. The Hon'ble Supreme Court in Subhabrata Roy @ Bapi Roy @ Roy Bapi's case (supra), has held as under:

“Learned counsel for the appellant has drawn our attention to similar orders passed by this Court and sought relief on similar terms. Per contra, learned counsel for the respondent stated that the trial is at the fag end and only one witness has to be examined and, therefore, this is not a fit case for grant of bail; also there are other cases pending against the appellant, as noted in paragraph 5 of the counter affidavit.

Having heard learned counsel for the respective parties and on perusal of the material on record, we are inclined to follow the orders passed by this Court in Criminal Appeal No.2013 of 2022 - Sabikul Kunahar @ Sabiku Nahar Mondal v/s. The State of West Bengal on 18.11.2022; SLP (Crl.) No.9064/2022 – Subrata Biswas @ Subra Biswas v/s. The State of West Bengal on 25.11.2022 and order passed in Criminal Appeal No.2293 of 2022 – Soni Devi v/s. The State of West Bengal on 15.12.2022.

In all the aforesaid cases, the recoveries made were in the nature of 190 bottles or 30 bottles of Phensedyl Syrup etc. This Court, considering the fact that the accused therein were in custody for quite sometime, which is also so in the instant case, bail was granted to the accused therein. We see no reason to differ from the aforesaid orders.

It is to be noted that in the present case, there was recovery of 28 bottles of 100ml each (2800ml) of Phensedyl Syrup. Considering the aforesaid orders and on the principle of Articles 14 and 21 of the Constitution of India, the appellant is released on bail, subject of course, to the conditions that may be imposed by the concerned Special Court.

The present Appeal is disposed of in the aforesaid terms.”

9. In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. 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.

(HARNARESH SINGH GILL)
JUDGE

15.09.2023
Mangal Singh

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