

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

CRM-M-47880-2022

Date of Decision: 16.01.2023

DALBARA SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

**CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

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

Mr. Kirat Singh Sidhu, DAG, Punjab.

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**JASJIT SINGH BEDI, J.**

The petitioner seeks the grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.202 dated 13.10.2020 registered under Sections 22 and 29 of NDPS Act, 1985 at Police Station Kotwali Nabha, District Patiala.

2. The brief facts of the case are that one Dalbara Singh (petitioner) son of Nahar Singh was serving sentence in FIR No.05 dated 12.02.2015 registered under Sections 395, 201 IPC at Police Station Ahmedgarh. A search was conducted in the jail premises and during the course of the search, intoxicants i.e. 195 tablets were recovered from the underwear of the petitioner wrapped in black tape. Vijay Kumar, Peon who is alleged to have handed over the contraband to the petitioner admitted his guilt and stated that he had procured the tablets from Baljinderjit Singh son of Gurdial Singh.

3. The learned counsel for the petitioner contends that the petitioner was arrested on 13.10.2020 and he has been in custody since the

last more than 02 years in the present case. In FIR No.05 dated 12.02.2015, he is undergoing his sentence of 07 years. The purported recovery from the petitioner is of 195 tablets of *Buprenorphine Hydrochloride* and the total weight is 21.84 gms. Since the commercial quantity is more than 20 gms, the recovery from the petitioner would be of a quantity marginally above the commercial quantity. He was thus, entitled to the grant of bail. He places reliance on the judgments in the case of *Shankar Prashad Chanau Versus The State of Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021, Hari Yadav @ Hariya Versus State of Punjab, CRM-M-37645-2021, decided on 11.02.2022, Jang Kanwar Versus State of Punjab, CRM-M-53415-2021, decided on 19.01.2022, Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022, decided on 04.04.2022, Salim Versus State of Haryana, CRM-M-42436-2020, decided on 24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021, decided on 27.01.2021 and Gurpreet Singh @ Gopi Versus State of Punjab, CRM-M-41039-2019, decided on 26.02.2020.*

Further, since the petitioner was in custody since 13.10.2020 and none of the 12 prosecution witnesses had been examined so far and he was a first-time offender, he was entitled to the grant of bail. Reliance is placed on the judgment of the Hon'ble Supreme Court in *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.*

4. On the other hand, the learned State counsel contends that the petitioner does not deserves the concession of regular bail as he is a habitual offender and convicted in another case. He, however, admits that there is no other case under the NDPS Act against the petitioner as also the fact that the petitioner has been in custody since the last more than 02 years and no prosecution witnesses has been examined so far.

5. I have heard the learned counsel for parties.

6. In the cases of **Shankar Prashad Chanau** (supra), **Gurpreet Kumar** (supra), **Hari Yadav @ Hariya** (supra), **Jang Kanwar** (supra), **Sukhchain Singh @ Manga** (supra), **Salim** (supra), **Gagandeep** (supra) and **Gurpreet Singh @ Gopi** (supra), where the recovery was of contraband marginally above the commercial quantity bail was granted to the accused therein.

7. 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 aforesaid 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 a total custody of 01 year and 06 months.

8. Keeping in view the aforesaid facts and circumstances, the further incarceration of the petitioner is not required. Therefore, the present petition is allowed and the petitioner-Dalbara Singh son of Nahar 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 present case.

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

16.01.2023

JITESH

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