

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M-48330-2022 (O&M)
Date of decision: 09.08.2023

KULDEEP SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. P.S. Hundal, Senior Advocate with
Mr. Vikramjeet Singh, Advocate for the petitioner.

Mr. C.L. Pawar, Addl. AG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

1. Through this third petition, the petitioner seeks regular bail in case bearing FIR No.122 dated 15.07.2021, registered under Sections 15-C and 29 of the NDPS Act, at Police Station Sangat, District Bathinda.
2. At this stage, Mr. Vikramjeet Singh, Advocate, appears and files power of attorney on behalf of the petitioner with 'no objection' from the earlier counsel, in the Court. The power of attorney is taken on record.
3. As per the prosecution version, recovery of 10 bags of *Poppy Husk*, containing 20 kg. each, was effected from the Endeavour Vehicle, being driven by the petitioner.
4. Learned counsel for the petitioner submits that in his first petition, the petitioner applied for interim bail, which though was granted to him, yet the same was not availed; that the second petition was dismissed as

withdrawn on 19.07.2022 and that the petitioner has been in custody since 15.07.2021.

5. Learned counsel for the petitioner further submits that the petitioner has falsely been implicated in the present case; that though the recovery effected in the present case falls under the commercial quantity but the fact remains that the petitioner has been in custody since 20.07.2021 i.e. more than two years and that out of 12 prosecution witnesses, only 02 have been examined so far. It is further submitted that there is no other registered or pending case against the petitioner, at least of a similar nature. In support of his contentions, learned counsel relies upon the order dated 22.08.2022 passed in Special Leave to Appeal (Crl.) No(s). 5530/2022 titled as Mohammad Salman Hanif Shaikh Vs. The State of Gujarat, and 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'.

6. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery 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. It is further submitted that the material prosecution witnesses are yet to be examined. He does not dispute the custody period of the petitioner and the fact that there is no other pending or registered case against the petitioner, at least of similar nature.

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

8. Indisputably, the recovery effected in the present case, falls under commercial quantity, but the fact remains that the petitioner has been in custody since 20.07.2021 i.e. more than two years. Remaining 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.

9. 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 afore-stated terms.

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

10. 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.

(HARNARESH SINGH GILL)
JUDGE

09.08.2023
Mangal Singh

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