

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-49957-2022

Date of Decision:-10.01.2023

Rahul Midha @ Lovy.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

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

Present:- Mr. Jashandeep Singh Sandhu, Advocate for the Petitioner.

Ms. Ramta Chowdhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.215 dated 30.12.2020 under Sections 22 of the NDPS Act, 1985 registered at Police Station Civil Lines, Bathinda, District Bathinda, Punjab.

The brief facts of the case are that while police party was on patrolling duty in connection with checking of sale of intoxicating substances, they saw a white coloured car bearing no.HR-51AM-1440 near a vacant plot. A man was sitting on the driver seat and looking into a plastic bag placed on the left side seat next to him. The vehicle was approached and surrounded. Intoxicating tablets were seen in the white coloured plastic bag. Thereafter senior police officials were informed. A search took place after following the provisions of the NDPS Act and pursuant thereto the recovery of 21,000 intoxicating tablets subsequently known to be Tramadol Hydrochloride was effected.

The Counsel for the petitioner contends that the entire story is unbelievable. It does not stand to reason that the petitioner would be

carrying the contraband in a white coloured bag visible to all. The search and seizure was not conducted before a gazetted officer or a Magistrate despite ample opportunity available with the IO. The standing instructions/guidelines issued by the DGP, Punjab regarding the vehicle to be used has been violated. There was non compliance of the mandatory provisions of Sections 42, 50, 52 & 55 of the NDPS Act. The petitioner was in custody since 30.12.2020 and only three witnesses had been examined and 02 partially examined. Therefore, as the Trial was not likely to be concluded in the near future, the petitioner was entitled to the grant of bail. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan Vs. 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.***

The Counsel for the State on the other hand contends that it is the third bail application of the petitioner. No change in circumstances have been enumerated in the present case entitling the petitioner to the grant of bail. Since a huge quantity of contraband has been recovered from him, the rigors of Section 37 of NDPS Act did not entitle him to the grant of bail. He however admits to the number of witnesses examined, the stage of trial as also the fact that the petitioner is a first time offender.

I have heard learned Counsel for the parties at length.

The Hon'ble Supreme Court in ***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.”

The aforementioned decision has been followed by this Court in the case of ***Balraj Singh Vs. State of Punjab CRM-M-57386-2022 Decided on 14.12.2022.***

In the present case, the petitioner is in custody since 30.12.2020. Three witnesses have been examined and 02 partially examined out of the 14 prosecution witnesses cited in the list of witnesses. The petitioner is a first time offender with with no other case registered against him under the NDPS Act. In view of the custody period already undergone by the petitioner the rigors of Section 37 of the NDPS Act can be relaxed to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides the right to a speedy trial.

In view of the aforementioned facts, as the trial is not likely to be concluded in the near future the further incarceration of the petitioner is not required.

Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner-**Rahul Midha @ Lovy** son of Sh. Amarjot is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

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 that he is not involved in any other crime other than the present case.

In addition, the petitioner (or any one on his behalf) shall prepare an FDR in the sum of Rs.3,00,000/- 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.

The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 10, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>