

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No.: CRM-M-47414-2023 (O&M)

Pronounced On : November 24, 2023

Amar Singh Petitioner
vs.
State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Lovish Arora, Advocate
for the petitioner.

Mr. Rozer Kumar Aggarwal, AAG, Punjab.

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GURBIR SINGH, J. :

1. This is second petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.16 dated 24.01.2022, under Sections 22/61/85 of the NDPS Act, 1985 (for brevity – the Act), registered at Police Station City Moga, District Moga.
2. As per the case of prosecution, on 24.01.2022, police party was present near Gurudwara Sahib of Village Ladoke, Moga, in search of some suspected persons, when secret information was received against the petitioner that he was habitual of selling intoxicating tablets and was coming on his motorcycle for selling the narcotic tablets to his clients and he could be apprehended with the narcotic tablets. ASI Tarsem Singh reduced the information to writing and sent the same to the Police Station City Moga for registration of FIR. He also informed the Incharge, CIA Staff, Bagha Purana through his mobile phone for further investigation and for sending a non-

gazetted Officer to the spot. ASI Varinder Kumar along with C-2 Lavjeet Singh came there and started checking of vehicles. The petitioner-accused was apprehended and his search was conducted, as per rules. On search of red coloured bag, which the petitioner was slinging on his shoulder, total 17,000 tablets of Chelcidol – 100 SR in strips of 10 tablets each were recovered. 15,000 tablets were of one Batch number and 2,000 tablets were of other Batch number. Samples were drawn in accordance with the rules. After investigation and after getting report from Forensic Science Laboratory (FSL), challan was presented.

3. Learned counsel for the petitioner has argued that mandatory provisions of Section 42 of the Act were completely violated. No such information was forwarded to the immediate senior officer within 72 hours of receiving the information. The provisions of Section 42 are mandatory but the Investigating Officer failed to comply with the same, in spite of the fact that he had sufficient time at his disposal to comply with the said provisions. No serious effort was made to join the independent witness. As per report of the FSL (Annexure P-2), Parcel No.1 was containing 10 tablets of white colour in a strip labeled as Chelcidol-100SR, with average weight of 457 mg/tablet and Parcel No.2 was containing 10 tablets of white colour in a strip labeled as Chelcidol-100SR, with average weight of 465 mg/tablet. Neither any batch number nor date of manufacture or date of expiry or any other particulars are mentioned in the report received from FSL. So, it cannot be said that the samples, which have been analysed in this case, are from the alleged recovery effected from the petitioner and are representative

sampels. Learned counsel further submits that the petitioner is in custody since 24.01.2022. Challan was presented on 21.06.2022. Only 05 prosecution witnesses, out of 18, have been examined so far. The completion of trial is likely to take a long time. So, the petitioner be released on bail. In support of his contentions, learned counsel for the petitioner has relied upon judgments of Hon'ble Supreme Court in Nitish Adhikary @ Bapan vs. State of West Bengal – Law Finder Doc Id # 2116733 and Hasanujjaman and others vs. The State of West Bengal – SLP(Crl.) No.3221/2023. Reliance has also been placed on judgments of this Court in Harjinder Singh @ Laddu vs. State of Punjab – CRM-M-37548-2022(O&M), decided on 10.02.2023 and Sukhwinder Singh @ Binder vs. State of Punjab – CRM-M-50536-2022(O&M), decided on 23.02.2023. It is further submitted that the earlier petition for bail was dismissed as withdrawn.

4. Learned State counsel has opposed the petition. He has submitted that recovery of contraband in this case falls under the commercial quantity. Seals of the samples were found intact and there was no tampering. If the batch number or other particulars were not mentioned in the FSL report, it hardly makes any difference as the same samples were tested which were taken into custody. However, he has fairly admitted that the petitioner is in custody since 24.01.2022 and only 05 witnesses, out of total 18 prosecution witnesses, have been examined.

5. Heard.

6. 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 aforestated terms.

Pending application(s), if any, shall stand

disposed of.”

7. In **Hasanujjaman & others Versus The State of West Bengal**

- **SLP (Crl.) No.(s).3221/2023**, decided on 04.05.2023, held as under :-

“1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’) in FIR No.18/2022, dated 09.01.2022, registered at Police Station Islampur, District Murshidabad, West Bengal.

*2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. **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.*

(emphasis supplied)”

8. The petitioner has been in custody in this case since 24.01.2022 i.e. for a period of 01 year and 10 months. There are 18 prosecution witnesses in all and out of them, only 05 witnesses have been examined. As per the recovery memo, the recovered tablets were bearing specific Batch numbers but in the report received from the FSL, it is mentioned that Parcel No.1 was containing 10 tablets of white colour in a strip labeled as Chelcidol-100SR, with average weight of 457 mg/tablet and Parcel No.2 was containing 10 tablets of white colour in a strip labeled as Chelcidol-100SR, with average weight of 465 mg/tablet. Each tablet was found to be

having Tramadol Hydrochloride. No Batch number has been mentioned in the said report. It shall be decided during trial if samples which have been tested in this case are representative samples but said factor cannot be ignored, at this stage. There is nothing on record to show that if the petitioner is released on bail, he is likely to be involved in such offence in future. The parameters of bail available under Section 37 of the Act appear to have been satisfied in the instant case.

9. In view of the aforesaid facts and circumstances of the case, completion of trial will take a long time and no useful purpose would be served by keeping the petitioner behind bars for a long time.

10. Accordingly, without commenting upon the merits of the case, the present petition is allowed and the petitioner is directed to be released on regular bail, on his furnishing bail bonds/surety bonds, to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

11. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

12. Pending applications, if any, shall stand disposed of along with the present petition.

November 24, 2023
monika

(GURBIR SINGH)
JUDGE

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