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

**CRM-M-50008-2022
Date of Decision: 12.07.2023**

Suraj @ Suraj Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, AAG, Punjab.

HARSH BUNGER J.

1. Petitioner (Suraj @ Suraj Singh) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case bearing FIR No.116 dated 25.06.2020 (Annexure P-1), under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station City Moga, District Moga.
2. Upon issuance of notice, status report by way of affidavit dated 01.03.2023 of Mr. Gursharanjit Singh, P.P.S., Deputy Superintendent of Police (City), Moga, District Moga, has been filed on behalf of State of Punjab, which is already on record.

3. Custody certificate dated 24.05.2023 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Briefly, the aforesaid case FIR was registered on the complaint of Tarsem Singh, C.I.A. Staff, Dharamkot, who had stated that while he, along with the police party, was present at the temporary passage Zira-Amritsar Road, Moga in connection with patrolling and search of bad elements then a secret information was received that Suraj Singh (petitioner) s/o Roshan Singh and Jaswinder Singh s/o Manjinder Singh, who are habitual of selling intoxicant tablets, on 25.06.2020, were going to Village Landoke, Dosanjh for selling the intoxicant tablets on their motorcycle bearing registration No.PB-29-J-4279 (Hero Honda Glamour, red and black in colour) and if barricading is done on the way then huge quantity of intoxicant tablets can be recovered from them. Finding the information to be true and reliable, *ruqa* was prepared and sent to the Police Station for registration of the case.

5. As per the status report, Assistant Sub Inspector Tarsem Singh (complainant) contacted Inspector Kikkar Singh, Incharge, C.I.A. Staff, Dharamkot and requested him to send another investigating officer at the spot. Thereafter, Sub Inspector Lakhwinder Singh along with the police party reached at the spot and conducted the barricading. After some time, one motorcycle came at the spot, whereon two Sikh persons were riding and one blue coloured bag was lying in between them. When the Sub Inspector Lakhwinder Singh gave signal to stop the motorcycle then the said persons tried to take a U-turn, however, they were apprehended by the police party. Upon inquiry, they disclosed their names as Suraj Singh (petitioner) and Jaswinder Singh (pillion rider). After following the due procedure, offer for

search under Section 50 of the Narcotic Drugs and Psychotropic Substances Act was made to them, whereupon both the aforesaid persons replied that they want their search to be conducted in the presence of gazetted officer, accordingly two separate memos were prepared and Janjit Singh, Deputy Superintendent of Police (D), Moga was requested to reach at the spot. Thereafter, during search, 2250 strips of Clovidol-100 SR tablets, each strip containing 10 tablets, total 22500 tablets, were recovered from the blue bag, being held by the aforesaid persons. According to the status report, as per the report of chemical examiner, *Tramadol* salt was found in the recovered tablets.

6. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the aforesaid case FIR No. 116 dated 25.06.2020. It is further submitted that the alleged recovery has been foisted upon the petitioner and the time of occurrence has also been wrongly shown in the instant case as the petitioner and co-accused were picked up by the police party during the day time. Learned counsel states that the petitioner is in custody since 30.06.2020, i.e. almost two years and eleven months (as on 24.05.2023). It is further stated that co-accused Jaswinder Singh has already been granted regular bail by a co-ordinate Bench of this Court vide order dated 20.09.2022 passed in CRM-M-1895-2022.

7. Learned counsel for the petitioner contends that one Jangjit Singh, Deputy Superintendent of Police, was called upon at the spot in the instant case, whereas his role came up for consideration before this Court in CRM-M-9434-2022 and CRM-M-5428-2022, wherein a report was called for, from the concerned Senior Superintendent of Police, who after conducting the inquiry, had come to the conclusion that the place of

occurrence had been changed by the police party and there was a procedural lapse on the part of police party, and accordingly, departmental inquiry was ordered against the said Jangjit Singh, Deputy Superintendent of Police and other officers. While referring to the order passed in CRM-M-1895-2022 (Annexure P-2), learned counsel for the petitioner has submitted that co-accused Jaswinder Singh has been granted the concession of regular bail after considering the fact that once the Deputy Superintendent of Police, who is stated to be called at the spot in the instant case, is under scanner and disciplinary proceedings have been initiated against him, accordingly allegation of false implication of the petitioner cannot be ignored. Accordingly, it is submitted that once the aforesaid fact regarding conduct of Jangjit Singh, Deputy Superintendent of Police has been considered by a co-ordinate Bench of this Court in this very FIR wherein petitioner is seeking bail and co-accused has been granted bail, accordingly, petitioner would also be entitled to bail.

8. Learned counsel for the petitioner contends that no other case is pending against the petitioner; investigation in the case is complete, challan stands presented on 03.11.2020 and even charges have been framed on 06.08.2021. It is submitted that there are fifteen prosecution witnesses in this case and only six witnesses have been examined so far, hence trial in the case is likely to take long time to conclude and no useful purpose would be served with further incarceration of the petitioner. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the

offence. It is submitted that recovery in the instant case falls under the category of commercial quantity and thus rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act are attracted. As regards the averment in respect of Jangjit Singh, Deputy Superintendent of Police, it is stated that although departmental proceedings have been initiated against him, however, the same has no concern or connection with the instant case. However, learned State counsel while referring to the custody certificate has submitted that there is no other case pending against the petitioner and he has undergone actual custody in this case for a period of two years, ten months and twenty eight days (as on 24.05.2023). It is also conceded by learned State counsel that concession of regular bail has already been granted to co-accused Jaswinder Singh by a co-ordinate Bench of this Court, vide order dated 20.09.2022 passed in CRM-M-1895-2022.

10. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

11. In this case, the petitioner is in custody for a period of two years, ten months and twenty eight days (as on 24.05.2023). Investigation in the case is complete, challan stands presented on 03.11.2020 and even charges have been framed on 06.08.2021. As per status report, out of total fifteen prosecution witnesses, only six witnesses have been have been examined, by now. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

12. The issue whether the petitioner has been falsely implicated in the instant case as Jangjit Singh, Deputy Superintendent of Police, who was called at the spot, is himself stated to be under scanner and departmental proceedings having been initiated against him in another case, the same

would be a debatable issue during the course of trial. Be that as it may, the conduct of said Deputy Superintendent of Police has been considered by a co-ordinate Bench of this Court in CRM-M-1895-2022, while granting the concession of regular bail to co-accused Jaswinder Singh.

13. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly it is apposite to refer to the judgments rendered by Hon'ble Supreme Court.

14. The Hon'ble Supreme Court in ***Chitta Biswas @ Subhas v. State of West Bengal (Criminal Appeal No. 245 of 2020 dated 07.02.2020)*** observed as under:-

“ xxx

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) *Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.*

(b) *The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.*

With the aforesaid directions, the appeal stands allowed.”

15. The Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan v. State of West Bengal (Special Leave(Crl.) no. 5769 of 2022)*** held as under:-

“ xxxxx

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.”

16. In *Shariful Islam @ Sarif v. State of West Bengal (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022)*, the Hon'ble Supreme Court held that:-

“ 1. Heard learned counsel appearing for the petitioner, learned counsel appearing for the State of West Bengal and carefully perused the material available on record.

2. Taking into consideration the fact that the petitioner is reported to be in custody since 27.12.2021 and has suffered incarceration for over 1 year 6 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the State, we are inclined to grant him bail.

3. The petitioner is, therefore, directed to be released on bail, subject to such terms and conditions which the concerned Trial Court may deem fit and find appropriate to impose upon him.

4. The Special Leave Petition stands disposed of on the above terms.

5. Pending application filed in the matter also stands disposed of.”

17. In *Karnail Singh v. State of Odisha (Criminal Appeal no. 2027 of 2022 dated 22.11.2022)*, Hon'ble Supreme Court held as under:-

“The appellant in the present case was only a Khalasi of the vehicle who did not run away while the others ran away and have still not been apprehended. He has been in custody from 21.03.2021 i.e. more than a year and a half.

In view of the aforesaid facts and circumstances, we grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.”

18. The Hon'ble Supreme Court in ***Karim Adaldar v. State of West Bengal (Special Leave to Appeal (Crl.) No. 8653 of 2022)*** held that:-

“Having heard learned counsel appearing for the parties and keeping in view the period of custody already undergone by the petitioner, and there being no likelihood of completion of trial in the near future, but without expressing any views on the merits of the case, the petitioner is ordered to be released on bail, subject to his furnishing bail bonds to the satisfaction of learned Additional Sessions Judge, 6th Court, Barasat, District – North 24 Parganas, West Bengal.”

19. Further, Hon'ble Supreme Court vide judgment dated 25.1.2023 arising out of ***SLP No.6690 of 2022***, titled as ***“Dheeraj Kumar Shukla Vs. State of Uttar Pradesh”*** has granted bail in a case registered under the Narcotic Drugs and Psychotropic Substances Act, where the accused alongwith co-accused was found in possession of ‘commercial’ quantity of ‘Ganja’ and had been behind bars since the last two and a half years while observing that in the absence of any criminal antecedents, the conditions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act could be dispensed with at that stage, particularly when there was delay in conclusion of trial.

20. In the instant case, the alleged recovery falls under the category of commercial quantity and bar of Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted, however, while dealing with Section 37 of the Narcotic Drugs and Psychotropic Substances Act, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence. In the facts of the present case and on an

assessment of material on record, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence. Further, considering the fact that the petitioner is not involved in any other case under the Narcotic Drugs and Psychotropic Substances Act, there is nothing on record to suggest that he is likely to commit an offence under the Narcotic Drugs and Psychotropic Substances Act, while on bail.

21. Keeping in view the aforementioned circumstances and the legal position as indicated above, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial.

22. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

23. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded

above are only for consideration of the prayer for bail at this stage.

24. The petition is accordingly disposed of.
25. All pending application(s), if any, shall also stand closed.

12.07.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No