

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

CRM-M-49898-2022

Date of Decision:-10.01.2023

Saadh Singh @ Ghoki.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

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

Present:- Mr. Yashpal Thakur, 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.71 dated 21.07.2020 under Sections 15, 18, 61, 85 of NDPS Act 1985 registered at Police Station Kheri Nodh Singh, District Fatehgarh Sahib, Punjab.

The brief facts of the case are that while the police party was on patrolling duty one canter was stopped coming from the side of village Fatehgarh Niwan being driven by a short hair person. On the conductor side one turbaned person was sitting. The said canter bearing No.PB-11-BF-4598 was stopped on suspicion. The driver disclosed his name as Dharminder Singh and the persons sitting on the conductor seat disclosed his name as Saadh Singh @ Ghoki (petitioner). Thereafter another investigating officer came to the spot and after following due procedure,

search of Dharminder Singh lead to the recovery of 1 Kg of Opium and the search of the petitioner yielded 500 grams of Opium. From the truck, 01 quintal 10 Kgs of poppy husk was recovered

The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He had taken a lift from the driver and he was unaware of the contents of the truck. The recovery of 500 grams of opium has been foisted upon him. The recovery memo did not bear his signatures. Since the petitioner was in custody since 21.07.2020 and only 01 prosecution witness had been examined and 02 partially examined out of 23 prosecution witnesses, the Trial was not likely to be concluded in the near future and, therefore, the petitioner was entitled to the concession of bail. Reliance is placed on the judgment of 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. A huge quantity of contraband has been recovered from the petitioner and his co-accused and, therefore, the rigors of Section 37 of NDPS Act did not entitle him to the grant of bail. He however does not dispute the fact that the Hon'ble Supreme Court in ***Nitish Adhikary @ Bapan's case (supra)*** had granted bail to the accused therein where he had undergone 01 year and 07 months of custody.

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 aforestated 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 21.07.2020. Only 01 witness has been examined and 02 partially examined out of the 23 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-**Saadh Singh @ Ghoki** son of Sh. Kaka Singh 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.2,00,000/- 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>