

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

203

CRM-M-51159-2022 (O&M)

Date of Decision: 12.04.2023

KELVIN MANSARY

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Manish Soni, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG Haryana.

Ms. Gurmeet Kaur Gill, Senior Panel Counsel
for respondent No.2.

HARNARESH SINGH GILL, J.(Oral)

Through this second petition, the petitioner seeks regular bail in Criminal Complaint No.VIII/19/DZU/2020 filed by the Intelligence Officer at Narcotics Control Bureau dated 20.08.2018 under Section 8/21(c)/22(d) of the NDPS Act, the first one having been dismissed on merits by this Court vide order dated 15.03.2022.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the present case; that though the alleged recovery of 255 gram Cocaine and 30 grams Amphetamine, effected in the present case, falls under the commercial quantity, yet the fact remains that the petitioner has been in custody since 04.03.2020 and that out of total 14 prosecution witnesses, only six have been examined so far. He further submits that the petitioner is not involved in any other case, much less of a similar nature.

In support of his contentions, learned counsel for the petitioner relies upon the orders 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, on 01.08.2022, and Criminal Appeal No.1570 of 2021, titled as 'Mahmood Kurdeya vs Narcotics Control Bureau', on 07.12.2021.

On the other hand, learned counsel appearing for respondent No.2, while opposing the grant of bail to the petitioner, submits that the contraband recovered in the present case, falls under the commercial quantity and the case of the petitioner is hit by the bar contained under Section 37 NDPS Act. However, she does not dispute the custody period of the petitioner. She further submits that the petitioner is a foreign national and if granted the concession of bail, there is every likelihood of him absconding the trial and that on search, a fake passport was also recovered from the house of the petitioner. Still further, it is submitted that another FIR No.427/17, under Section 3/14 of the Foreigners Act, Police Station DLF-I, Gurugram, stands registered the petitioner.

I have heard the learned counsel for the parties.

After investigation, challan was filed and thereafter, the charges were framed. Eight prosecution witnesses are yet to be examined and there is no likelihood of completion of trial any time soon.

This Court is conscious of the fact that the recovery effected in the present case falls under the commercial quantity and that the petitioner is a foreign national, but the fact remains that the petitioner has

been in custody since 04.03.2020. There is no other case registered or pending against the petitioner, at least of a similar nature. All these facts persuade this Court to grant bail to the petitioner despite the rigors of Section 37 NDPS Act in the present case. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

In view of the above, 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.

12.04.2023

Aman Jain

(HARNARESH SINGH GILL)**JUDGE**

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*