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2023:PHHC:059862

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-7561-2023 in/and

CRM-M-54142-2022

Date of decision: 27th April, 2023

Sukhjeet

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Choudhary, Advocate for the petitioner.
Mr. Sharad Aggarwal, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

CRM-7561-2023

This application is filed for preponing the date of hearing in the main petition.

Since the main case is listed today, the prayer made in the application renders infructuous.

The application is disposed of as infructuous.

CRM-M-54142-2022

1. This second petition is filed seeking regular bail in FIR No. 582, dated 30th November, 2019, under Sections 15(c) and 27(a) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered at Police Station City Tohana, District Fatehabad.

2. Learned counsel for the petitioner claims parity with co-accused Naib Singh who was granted regular bail by this court on 15th November, 2022 in CRM-M-29466-2022.

3. On 15th November, 2022, following order was passed by this

Court:-

“This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 582 dated 30th of November, 2019 registered for the offences punishable under Sections 15(c) and 27(a) of the NDPS Act, 1985 at Police Station City Tohana, District Fatehabad.

2. As per the allegations levelled in FIR on 30th of November, 2019, the petitioner was apprehended in conscious possession of 500 kilograms of poppy husk without any licence. Reply by way of affidavit of Deputy Superintendent of Police, Tohana, District Fatehabad has been filed on behalf of the State, which is taken on record and the said fact that the petitioner being behind the bars since 30th of November, 2019 is not in dispute. As per prosecution, Challan was presented on 30th of May, 2020 and the charges were framed on 28th of April, 2021. Since then the trial has not proceeded qua the petitioner. Ld. Counsel for the petitioner submits that the Challan has been presented and there is no other case under the provisions of NDPS Act against the petitioner. There are 18 cited witnesses and none of them has been examined as yet. He thus submits that the petitioner has undergone custody of approximately 3 years and has a right to speedy trial guaranteed under Article 21 of the Constitution of India. He submits that the false case has been foisted upon the petitioner who has no criminal antecedents. Counsel asserts that right of an accused to have speedy trial stands recognized under the provisions of the NDPS Act as well and, thus, Section 37 of the NDPS Act in such situation has to be read as subservient to the Fundamental Right of the petitioner guaranteed under Article 21 of the Constitution of India.

3. He further relies upon order passed by this Court in CRM-M No.18805 of 2022 titled as Satnam Singh vs. State of Punjab, decided on 2nd of September, 2022, whereby the petitioner, who was in custody for more than 2 years, 2 months and 29 days was held entitled to bail. He refers to various orders passed by the Supreme Court in Shariful Islam @ Sarif vs. The State of West Bengal passed in Special Leave to Appeal (Crl.) No.4173 of 2022 decided on 4th of August, 2022, Gopal Krishna Patra @ Gopalrusma Vs. Union of India passed in Criminal Appeal No.1169 of 2022 decided on 5th of August, 2022, Chitta Biswas @ Subhas vs. The State of West Bengal passed in Criminal Appeal No(s).245/2020 decided on 7th of February, 2020 and Mohammad Salman Hanif vs. The State of Gujrat, Special Leave to Appeal (Crl.) No(s).5530/2022 decided on 22nd of August, 2022 wherein undertrials have been granted relief of regular bail on the basis of custody dehors Section 37 of the NDPS Act. He also relies upon judgment of the Supreme Court in Sujit Tiwari vs. State of Gujarat and another, reported as (2020) 13 SCC 447 wherein Apex Court found that a person in custody for more than 2 years was entitled to bail.

4. Mr. Jain appearing for the State does not dispute the factual assertions made by counsel for the petitioner based on

record however he submits that the trial could not proceed for the reason one of the co-accused (Dharambir) could not be arrested till date and further supplementary Challan was required to be filed qua co-accused Tony alias Richpal and the same was filed only on 20th of July, 2022.

5. I have heard Ld. Counsel for the parties and have gone through the records of the case.

6. The petitioner has already suffered prolonged incarceration of about 3 years. There is no other case under the provisions of NDPS Act registered against the petitioner. There are 18 cited witnesses and, thus trial is expected to take a long time and is not going to conclude in near future.

7. In the case of Shariful Islam @ Sarif case (supra), Apex Court found that an under-trial having suffered incarceration over 1 year and 6 months is entitled for grant of regular bail holding that :-

“2. Taking into consideration the fact that the petitioner is reported to be in custody since 27-1-2021 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.”

8. Similarly, the Supreme Court in Gopal Krishna Patra @ Gopalrusma's case (supra) ordered as under :-

“The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No. 02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned. Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.”

9. The Supreme Court in Chitta Biswas @ Subhas's case (supra) ordered as under :-

“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.”

10. The Supreme Court in another case titled as Mohammad Salman Hanif's case (supra) ordered as under :-

“The petitioner seeks enlargement on regular bail in the case FIR being C.R.No.NDPS/11192015200884/2020 registered at Changodar Police Station, District Ahmedabad (Rural) for the offences punishable under Sections 8(c), 21(c) and 29 of the NDPS Act.

As per the allegations, 358 bottles of cough syrup containing codein of 'commercial quantity' was recovered from the petitioner.

We have heard learned counsels for the parties and are of the considered opinion that the questions like whether the contraband recovered from the petitioner is of 'commercial quantity' or whether codein phosphate is a manufactured drug or a narcotic substance, need not be go into at this stage.

We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.”

11. Division Bench of this Court in Bhupender Singh vs. Narcotic Control Bureau, (2022) 2 RCR (Criminal) 706 after considering issue with respect to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and the rigors enumerated under Section 37 of the Act held that convict/accused is not precluded from claiming bail invoking parameters of Article 21 of the Constitution of India de hors the stringent provisions of Section 37 of the Act.

12. Right to speedy trial is one of the objectives of NDPS Act and is rather one of the checks and balances provided under the Act. Section 36 NDPS Act recognizes the

need for speedy trial. The provision contained in Section 36 providing for constitution of Special Courts is a means to achieve the end objective of speedy trial. Section 36 well recognizes the need for speedy trial. It is only with an objective to synthesize the right to speedy trial and rigors of Section 37 that the Supreme Court in the aforereferred cases granted concession of regular bail to the under-trials solely on the basis of long incarceration that they have suffered owing to delay in trial.

13. Keeping in view the aforesaid facts and circumstances of the present case, the instant petition deserves to be allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.

(iii) The petitioner shall not absent himself on any date before the trial.

(iv) The petitioner shall not commit any offence similar to the one alleged in the present case.

(v) The petitioner shall deposit his passport, if any with the trial Court.

(vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.

(vii) The petitioner shall not in any manner try to delay the trial.

14. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

15. Ordered accordingly.”

4. Learned counsel for the State though opposes the prayer for grant of bail but on instructions submits that challan has been presented. He is not in a position to distinguish the case of the petitioner qua the co-accused so far as grant of bail is concerned.

5. Without commenting on the merits of the case, on the basis of parity of petitioner vis-a-vis co-accused so far as grant of bail is concerned and though the investigation is complete but conclusion of trial is likely to

7. However, it is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

8. Since the main petition is allowed, pending application, if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

Parveen Sharma

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