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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-52779-2023
Date of Decision: 21.12.2023

Gurpreet Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J. (ORAL)

1. Petitioner-Gurpreet Singh has filed this second petition under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.40 dated 13.05.2022 (Annexure P-1), under Section 22 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Lakhewali, District Sri Muktsar Sahib.
2. Custody certificate dated 18.12.2023 of the petitioner has been filed by learned State counsel in Court today, which is taken on record,

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subject to all just exceptions.

3. Reply dated 15.12.2023 by way of an affidavit of Fateh Singh Brar, PPS, Deputy Superintendent of Police, Sub-Division Malout, District Sri Muktsar Sahib on behalf of respondent/State of Punjab has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

2. Briefly, as per the aforesaid FIR, on 13.05.2022, when the police party headed by Assistant Sub Inspector Santokh Singh was patrolling near Village Lakhewali in a private car for checking the suspicious persons and was present at Pakka Link Road near Dana Mandi at Village Samewali then two young persons were seen coming on motorcycle bearing registration No.PB-22U-7073 (Hero Splendor) from the side of Village Pakka towards Village Samewali and on seeing the police party, the said persons became nervous and tried to turn back their motorcycles, however, they lost balance and fell down on the side of the road and the polythene hanging on the motorcycle also fell down, from which some tablet strips got scattered on the ground. On the basis of suspicion, Assistant Sub Inspector Santokh Singh with the help of fellow officials apprehended the aforesaid persons and inquired from them, whereupon the driver of motorcycle told his name as Gurpreet Singh s/o Kaka Singh (petitioner) and the pillion rider told his name as Vikram Singh s/o Malkit Singh. Since the tablet strips scattered on the ground seem to be intoxicating tablets, accordingly, Assistant Sub Inspector Rajdavinder Singh was called at the spot, who introduced himself to the aforesaid two persons and also inquired about their names and addresses. Thereafter, the aforesaid persons were made aware of

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their rights to get their personal search as well as the search of polythene (since some intoxicating articles were suspected therein) to be conducted in the presence of any Gazetted Officer or Magistrate, however, they reposed faith in Assistant Sub Inspector Rajdavinder Singh to carry out their search, whereupon, the search was carried out as per procedure and the following articles were recovered:-

“(a) 54 tablet strips Clobedol 100 SR Tramadol Hydrochloride tablets 100 mg. (each strip containing ten tablets, total 540 tablets) Batch No.ALT 2006, Mfg. 3/2022, Exp. 2/2025.

(b) 51 tablet strips Clobedol 100 SR Tramadol Hydrochloride tablets 100 mg. (each strip containing ten tablets, total 510 tablets) Batch No.ALT 2005, Mfg. 3/2022, Exp. 2/2025 – total 1050 tablets were recovered”.

3. After following the due procedure, the recovered articles and offending motorcycle were taken into police custody vide recovery memo.

4. Learned counsel for the petitioner submits that this is the second bail petition filed on behalf of the petitioner due to change of circumstances, as the earlier bail application was dismissed on 21.03.2023 and from that date, the custody of the petitioner has increased to 01 year, 07 months and 06 days (as on 18.12.2023). Moreover, the learned trial Court has adjourned the case for 27.05.2024, meaning thereby, there would be no progress in the trial for the next six months. Learned counsel submits that the petitioner is innocent and he has been falsely implicated in this case. It is submitted that the alleged recovery of 1050 tablets of *Clobedol 100 SR* was not effected from the conscious possession of the petitioner. It is submitted that the petitioner is behind the bars in the instant case since 13.05.2022; investigation of the case is complete, challan stands presented on 04.11.2022

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and even charges have been framed on 03.01.2023. It is stated that there are total fourteen prosecution witnesses, however, three witnesses have been examined till date. Hence, the conclusion of trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind bars. It is submitted that the petitioner is not involved in any other case. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. It is submitted 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.

5. Per contra, learned State counsel opposes the plea of petitioner made in the present petition on the ground of seriousness of the offences. It is submitted that the petitioner was apprehended at the spot and huge quantity of narcotic drugs has been recovered from him. Learned State counsel submits that recovery (1050 tablets of *Clobedol 100 SR*) effected from the petitioner falls in the category of 'commercial quantity', thus, the bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is attracted in the present case. However, learned State counsel has not disputed that investigation of the case is complete, challan stands presented and charges have also been framed and out of 14 witnesses, only 3 witnesses have been examined. It is also not disputed that the trial Court has adjourned the matter for 27.05.2024 and the petitioner has been in custody since 13.05.2022.

6. I have heard learned counsel for the parties and perused the

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paper book, custody certificate as well as the status report filed by learned State counsel.

7. By way of this second petition, the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to be concluded in near future, accordingly gainful reference can be made to judgments rendered by Hon'ble Supreme Court in "Chitta Biswas @ Subhas v. State of West Bengal" (Criminal Appeal No. 245 of 2020 dated 07.02.2020), "Nitish Adhikary @ Bapan v. State of West Bengal" (Special Leave(Crl.) No. 5769 of 2022), "Shariful Islam @ Sarif v. State of West Bengal" (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022), "Karnail Singh v. State of Odisha" (Criminal Appeal No. 2027 of 2022 dated 22.11.2022), "Karim Adaldar v. State of West Bengal" (Special Leave to Appeal (Crl.) No. 8653 of 2022), "Dheeraj Kumar Shukla Vs. State of Uttar Pradesh" (SLP No.6690 of 2022 dated 25.01.2023) and "Hasanujjaman and others Vs. The State of West Bengal" (Special Leave Appeal (Crl.) No(s).3221 of 2023 dated 04.05.2023).

Recently, a Co-ordinate Bench of this Court in CRM-M-41842-2023 titled as "Rajinder Singh @ Happy vs. State of Punjab", while referring to the cases of "Nitish Adhikary @ Bapan v. State of West Bengal" (Special Leave(Crl.) No. 5769 of 2022) and "Hasanujjaman and others Vs. The State of West Bengal" (Special Leave Appeal (Crl.) No(s).3221 of 2023 dated 04.05.2023), has observed as under:

"In the instant case, the petitioner is stated to be in custody since 10.06.2022 and none out of the 23 prosecution witnesses have been examined so far. He is also a first-time offender with no other case registered against him. In this

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situation, the rigors of Section 37 of the NDPS Act can be diluted to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to a speedy trial and the case of the petitioner can be considered for the grant of bail.”

8. Concededly, the alleged recovery in this case falls under the category of 'commercial quantity' and bar of Section 37 of the N.D.P.S. Act is attracted, however, while dealing with Section 37 *ibid*, 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.

9. In the peculiar facts and circumstances that the petitioner is not involved in any other case and the intoxicating tablets allegedly recovered were scattered on the ground and the issue of conscious possession of intoxicating tablets would be a subject matter of trial, accordingly, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence and he is unlikely to commit an offence under the N.D.P.S. Act, while on bail.

10. Furthermore, the petitioner is in custody for a period of 01 year, 07 months and 06 days (as on 18.12.2023). Investigation in the case is complete, challan stands presented on 04.11.2022 and even charges have been framed on 03.01.2023. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

11. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the

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competent Court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

12. In view of the above discussion, 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 every alternate Monday till the conclusion of trial.

13. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.2,00,000/- 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

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any sufficient cause.

14. 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.

15. The petition is accordingly disposed of.

16. All pending application(s), if any, shall also stand closed.

21.12.2023
Himani

(HARSH BUNGER)
JUDGE

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