

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-57295-2022 (O&M)

Date of decision: 31.08.2023

Karan Batta

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Abhinav Gupta, Advocate for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

1. Prayer in this second petition is for grant of regular bail to the petitioner in case bearing FIR No.17 dated 20.01.2021, registered under Sections 21 and 22 of the NDPS Act, at Police Station Sadar Patiala, District Patiala.

2. As per the prosecution version, recovery of 400 grams of intoxicating powder had been effected near the hand-brake of the car, in which the petitioner was travelling as a co-passenger, and recovery of 100 grams of *Heroin*, had been effected from the petitioner and co-accused.

3. Learned counsel for the petitioner has very fairly conceded that the first bail petition was dismissed on merits by this Court on 27.05.2022. He further submits that though the alleged recovery effected in the present case, fall under the commercial quantity, yet the fact remains that the petitioner was travelling in the car along with three co-accused and he has been in custody since 21.01.2021 i.e. more than 02 years and 07 months and some of the prosecution witnesses are yet to be examined; that the petitioner has been

involved in FIR No.86 dated 21.03.2023 under Section 20 of the NDPS Act and Section 42-52A of the Prison Act, during his custody in the present case and that similarly situated co-accused Gurwinder Singh @ Guri @ Rana, has already been enlarged on bail by this Court vide order dated 31.07.2023.

4. In support of his contentions, learned counsel relies upon the order dated 18.07.2023 passed by the Hon'ble Supreme Court in Special Leave Petition (Crl.) No.4637/2023, titled as 'Subhabrata Roy @ Bapi Roy @ Roy Bapi Vs. State of West Bengal', vide which the appellant therein who had as many as 19 cases, including 02 cases under the NDPS Act, registered or pending against him, has since been granted the benefit of bail. It is further submitted that in the said case, trial was at the fag end whereas in the present case, some of the witnesses are yet to be examined.

5. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery effected from the petitioner falls under the commercial quantity and that Section 37 NDPS Act bars the grant of bail to the accused in case of commercial quantity. It is further submitted that the petitioner is a habitual offender and that material prosecution witnesses are yet to be examined.

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

7. Though the recovery of contraband effected in the present case, is commercial quantity, yet the fact remains that the petitioner has been in custody since 21.01.2021 i.e. more than 02 years and 07 months and that some of the prosecution witnesses are yet to be examined. Trial of the case

would take time to conclude. As stated above, similarly placed co-accused Gurwinder Singh @ Guri @ Rana, has already been enlarged on bail by this Court vide order dated 31.07.2023 and the petitioner has been involved in another case, during his custody in the present case.

8. The Hon'ble Supreme Court in Subhabrata Roy @ Bapi Roy @ Roy Bapi's case (supra), has held as under:

“Learned counsel for the appellant has drawn our attention to similar orders passed by this Court and sought relief on similar terms. Per contra, learned counsel for the respondent stated that the trial is at the fag end and only one witness has to be examined and, therefore, this is not a fit case for grant of bail; also there are other cases pending against the appellant, as noted in paragraph 5 of the counter affidavit.

Having heard learned counsel for the respective parties and on perusal of the material on record, we are inclined to follow the orders passed by this Court in Criminal Appeal No.2013 of 2022 - Sabikul Kunahar @ Sabiku Nahar Mondal v/s. The State of West Bengal on 18.11.2022; SLP (Crl.) No.9064/2022 – Subrata Biswas @ Subra Biswas v/s. The State of West Bengal on 25.11.2022 and order passed in Criminal Appeal No.2293 of 2022 – Soni Devi v/s. The State of West Bengal on 15.12.2022. In all the aforesaid cases, the recoveries made were in the nature of 190 bottles or 30 bottles of Phensedyl Syrup etc. This Court, considering the fact that the accused therein were in custody for quite sometime, which is also so in the instant case, bail was granted to the accused therein. We see no reason to differ from the aforesaid orders. It is to be noted that in the present case, there was recovery of 28 bottles of 100ml each (2800ml) of Phensedyl Syrup. Considering the aforesaid orders and on the principle of Articles 14 and 21 of the Constitution of India, the appellant is released on bail, subject of course, to the conditions

that may be imposed by the concerned Special Court. The present Appeal is disposed of in the aforesaid terms.

9. In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. 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.

(HARNARESH SINGH GILL)
JUDGE

31.08.2023
Mangal Singh

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No