

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-58290-2022 (O&M)
Date of decision: 01.06.2023

Vikas Kumar @ Sonu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Simranjeet Singh, Advocate for the petitioner.

Ms. Ishma Randhawa, Addl. AG Punjab.

HARNARESH SINGH GILL, J. (ORAL)

The petitioner has filed this 2nd petition under Section 439 of Cr.P.C. for grant of regular bail in case FIR No. 252 dated 23.10.2020 registered under Section 22 of the NDPS Act at Police Station City Patti, District Tarn Taran. The first bail petition was dismissed as withdrawn on 29.07.2022.

Status report by way of affidavit dated 30.05.2023 of the Deputy Superintendent of Police, Sub-Division Patti, District Tarn Taran, submitted by the learned State counsel in the Court, is taken on record. Copy of the same has been handed over to the learned counsel for the petitioner in the Court.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the present case and the alleged recovery of 3000 intoxicant tablets, effected from the petitioner, is a planted one; that the petitioner is the owner of a cloth shop; that as per the daily routine, the

petitioner was present at the shop, when at around 10.00 am, SI Sukhraj Singh entered the shop and took him forcibly; that though the recovery effected from the petitioner is of commercial quantity but the fact remains that the petitioner has been in custody since 24.10.2020 i.e. for the last more than 02 years and 07 months; that the co-accused is on bail; that there is no other registered or pending case against the petitioner and that out of 09 prosecution witnesses, none has been examined so far.

In support of his case, learned counsel for the petitioner relies upon the orders dated 25.01.2023, passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s).6690/2022, titled as 'Dheeraj Kumar Shukla Vs. State of Uttar Pradesh' and the order dated 01.08.2022 passed in Special Leave to Appeal (Crl.) No.5769-2022, titled as 'Nitish Adhikary @ Bapan Vs. State of West Bengal'.

Per contra, while opposing the prayer for grant of regular bail to the petitioner, learned State counsel does not dispute the custody period of the petitioner. She, however, submits that the recovery effected from the petitioner falls under the commercial quantity and that Section 37 of the NDPS Act bars the grant of bail to the accused in case of commercial quantity. She further submits that the material witnesses are yet to be examined.

I have heard the learned counsel for the parties.

Though the recovered contraband in the present case, falls under the commercial quantity, yet the fact remains that the petitioner has been in custody for the last more than 02 years and 07 months and that the

prosecution witnesses are yet to be examined. Co-accused is already on bail. In such circumstances, trial of the case would take a long time to conclude. There is no other case registered or pending against the petitioner. Therefore, no useful purpose would be served by keeping the petitioner behind the bars.

The Hon'ble Apex Court in 'Dheeraj Kumar Shukla's case (supra) has held as under:

'3. It appears that some of the occupants of the `Honda City' Car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.

4. For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

5. It is made clear that in addition to the conditions that may be imposed by the Trial Court, the petitioner shall be required to appear before the Trial Court on every date of hearing. In case the petitioner is found to be involved in future in any other similar case, the respondent – State shall be at liberty to seek cancellation of bail granted to him by this Court.

6. The Special Leave Petition stands disposed in the above terms.....'.

The Hon'ble Apex Court in 'Nitish Adhikary @ Bapan's case

(supra) has held as under:

“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 afore-stated terms.

Pending application(s), if any, shall stand disposed of.”.

In view of the above, without commenting anything on the merits, lest it should prejudice the case of either side, the petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

(HARNARESH SINGH GILL)
JUDGE

01.06.2023
Mangal Singh

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