

CRM-M-55895-2023 (O & M) ::1:-

(227) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55895-2023 (O & M)
Date of Decision: 15.11.2023

Prince Chopra
... Petitioner

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Manmeet Singh, Advocate,
For Mr. Yashpal Thakur, Advocate, for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in this third petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.241 dated 12.12.2021 registered under Sections 21-B/22-C/29/61/85 of the NDPS Act, 1985 at Police Station Sirhind, District Fatehgarh Sahib, Punjab.

2. The brief facts of the case are that while the police party was on patrolling duty, the Investigating Agency received information that Prince Chopra (petitioner) and Sukhpreet Singh (since granted bail vide order dated 24.07.2023 passed in CRM-M-7589-2022) used to sell heroin and both of them would be coming on a scooter from the side of Pamarsi to Sirhind to deliver heroin to their customers. If a *Naka* was installed, they could be apprehended.

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Based on the said information, the aforementioned FIR was got registered, a *Naka* was set up and the petitioner-Prince Chopra and co-accused/Sukhpreet Singh were apprehended and the recovery of 1100 intoxicating tablets came to be effected from them.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act had not been complied with in their proper perspective. No independent witness was joined at the time of search and seizure. As the petitioner was in custody since 12.12.2021 and only 03 out of the 19 prosecution witnesses had been examined, the trial of the present case was not likely to be concluded anytime soon and therefore, he was entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in the case of '*Nitish Adhikary @ Bapan Versus The State of West Bengal, SLP (Crl.) Nos.5769/2022 arising out of judgment and order dated 04.05.2022 in CRM(NDPS) No.442/2022, decided on 01.08.2022 and Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023*', even though, he was a convict in one other case under the NDPS Act arising out of FIR No.78 dated 13.06.2017 under Sections 21 of the NDPS Act, Police Station Guhla.

4. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband had been recovered from the

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petitioner. Therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail, moreso, when he was a prior convict in a case arising out of FIR No.78 dated 13.06.2017 under Section 21 of the NDPS Act, Police Station Guhla.

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

6. The Hon'ble Supreme Court in the case of **Nitish Adhikary @ Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Decided on 01.08.2022** held as under:-

“As per the office report dated 29.07.2022, copy of the show cause notice along with Special Leave Petition was supplied to the Standing Counsel for the State of West Bengal and separate notice has been served on the State also. However, no one has entered appearance on their behalf.

The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37 of the NDPS 2 Act, registered at Police Station Bongaon, West Bengal.

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.

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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 aforestated terms.

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

7. In **Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023, decided on 04.05.2023,** held as under:-

“1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’) in FIR No.18/2022, dated 09.01.2022, registered at Police Station Islampur, District Murshidabad, West Bengal.

*2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. **They were arrested on the spot and have been in custody for more than one year and four months.***

3. We have heard learned counsel for the parties and carefully perused the record.

4. The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal

antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court.

6. Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.

7. The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.

8. The Special Leave Petition stands disposed of in the above terms.

9. As a result, pending interlocutory application also stands disposed of.

(emphasis supplied)

8. In the instant case, though the petitioner is stated to be in custody since 12.12.2021 and only 03 out of the 19 prosecution witnesses have been examined so far, the petitioner is a convict in one other case under the NDPS Act and in this situation, the satisfaction under Section 37 of the NDPS Act cannot be arrived at that the petitioner has not committed the offence in question and was not likely to commit one in future. The two earlier bail applications of the petitioner were withdrawn on 24.07.2023 and 04.10.2023. The instant third petition has been filed without any change in circumstances. Therefore, even though the co-accused of the petitioner has

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been granted the concession of bail, the petitioner cannot be granted the similar concession.

9. In view of the above, I find no merit in the present petition and therefore, the same stands dismissed.
10. However, if there is a significant delay in the conclusion of the trial, the petitioner is at liberty to approach this Court once again seeking the relief as sought in this instant petition.

(JASJIT SINGH BEDI)
JUDGE

November 15, 2023
sukhpreet

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