

CRM-M-59287-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-59287-2022 (O & M)****Date of decision: 03.07.2023**

Chhinda @ Shinda

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Anmol, Advocate,
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.75 dated 01.06.2021 under Section 21 of the NDPS Act, registered at Police Station Sadar Ferozepur, District Ferozepur.

2. The brief facts of the case are that while the police party was on patrolling duty, a secret informer informed them that Shinda (petitioner) son of Buta, was habitual of selling intoxicant tablets and was making preparations for going to Ferozepur on his motorcycle and if a *nakabandi* was set-up, he could be apprehended.

Based on the said information, the present FIR was registered. Subsequent thereto, a *naka* was set-up and the petitioner came to be apprehended alongwith 2000 intoxicating tablets make Clozetic Plus and 200 tablets make Celvidol 100-SR.

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3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. Nothing had been recovered from his conscious possession. There was non-compliance of the mandatory provisions of search and seizure. As the petitioner was a first-time offender, in custody since 01.06.2021 and none of the 14 prosecution witnesses had been examined so far, he was entitled to the concession of bail. Reliance was placed on the judgment of the Hon'ble Supreme Court in '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 followed by this Court in the case of 'Balraj Singh versus State of Punjab (CRM-M-57386-2022 decided on 14.12.2022)'.

5. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband has been recovered from the petitioner, and therefore, the bar contained under Section 37 of the NDPS Act did not entitle him to the grant of bail. He, however, fairly concedes that the petitioner was a first-time offender, in custody since 01.06.2021 and none of the 14 prosecution witnesses had been examined so far.

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

7. 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.

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.”

This Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022** has followed the dictum laid down by the Hon'ble Supreme Court and granted bail to the petitioner therein after he had undergone total custody of 01 year and 06 months.

8. In the instant case, admittedly, the petitioner is in custody since 01.06.2021 and none of the 14 prosecution witnesses have been examined so far. The petitioner is also a first-time offender. Therefore, the conditions envisaged under Section 37 of the NDPS Act can be relaxed to an extent keeping in view Article 21 of the Constitution of India which provides for

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the right to a speedy Trial and the case of the petitioner can be considered for the grant of bail.

9. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner-Chhinda @ Shinda is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

10. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the present one

11. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

July 03, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No