

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

CRM-M-60770-2022

Date of Decision: 09.01.2023

GURDAS SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr Ashok Kumar Khunger, Advocate
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The petitioner seeks the grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.0130 dated 27.04.2020 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985, Section 188 IPC, 1860 and Section 51(b) of the Disaster Management Act, 2005 at Police Station Sadar Fazilka, District Fazilka.

2. Bereft of unnecessary details, the allegations, as levelled in the FIR, are that on 27.04.2020, ASI Bhagat Singh received a secret information that one Gurdas Singh had been indulging in the sale of intoxicant tablets and on that day, he, along-with one more person, was coming to Fazilka in a Car bearing registration No.PB-30X-9121 to sell the drugs. A Naka was installed but when the car came there and was signalled to stop, a stray animal came onto the road because of which the car overturned. The occupants of the car were taken to the Hospital. The police party reached at the spot and 2000 tablets Clovidol-100SR were recovered from the accidented vehicle.

3. The learned counsel for the petitioner contends that undoubtedly this is the 4th bail petition filed by the petitioner and his earlier bail application has been dismissed on merits vide order dated 15.07.2022. He however submits that in terms of the judgment passed by 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 followed by this Court in the case of **Balraj Singh Versus State of Punjab, CRM-M-57386-2022, decided on 14.12.2022**, the petitioner deserves the concession of regular bail as only 01 out of the 22 prosecution witnesses have been examined so far and the petitioner has undergone total actual custody of 02 years, 01 month and 05 days as per the custody certificate dated 08.01.2023. The copy of the custody certificate is marked as 'X'.

4. On the other hand, the learned State counsel contends that this is the 4th bail application of the petitioner. His earlier bail application has been dismissed on merits. No change in circumstances has been enumerated entitling the petitioner to the grant of bail. He ,however, does not dispute the fact that in the case of **Nitish Adhikary @ Bapan**(supra) the Hon'ble Supreme Court has granted the concession of bail to an under-trial, where he had undergone a total custody of 01 year and 07 months.

5. I have heard the learned counsel for both the parties at length.

6. The Hon'ble Supreme Court in **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 a total custody of 01 year and 06 months.

7. The petitioner has been in custody since 27.04.2020 as is borne out from the custody certificate 08.01.2023. He is a first-time offender. Only 01 out of the 22 prosecution witnesses have been examined so far as is discernible from the Zimni orders which are marked as 'Y'. Therefore, on

account of delay in the conclusion of the Trial, the rigors of Section 37 of the NDPS Act can be relaxed to an extent and the prayer of the accused for grant of bail can be considered despite the fact that he has been allegedly found in possession of commercial quantity of contraband keeping in view the right to a speedy trial as envisaged under Article 21 of the Constitution of India.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Gurdas Singh son of Satnam Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

9. In addition, the petitioner shall prepare an FDR in the sum of Rs.2,00,000/- 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

09.01.2023

JITESH

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