

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-04.03.2024

CRM-M-1027-2024

Balram @ Balli @ Balram Jakhar.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

AND

CRM-M-3883-2024

Gurmel @ Meli.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. P.S. Sekhon, Advocate for the Petitioner
(in CRM-M-1027-2024).

Mr. Vishavjeet Gill, Advocate for the Petitioner
(in CRM-M-3883-2024).

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

JASJIT SINGH BEDI, J.(ORAL)

By this common order I shall disposed of both the
aforementioned petitions as the same have arisen out of one and the same
FIR.

2. The Prayer in this petition under Section 439 Cr.PC is for the
grant of regular bail in case FIR No.297 dated 20.08.2022 under Sections

15-C, 27-A of the NDPS Act, 1985 Police Station Narwana Sadar, District Jind.

3. The brief facts of the case are that while police party was on patrolling duty information was received that Gurmail (petitioner in CRM-M-3883-2024) and Balram @ Ballu (petitioner in CRM-M-1027-2024) were in the business of selling Poppy Husk. They were in a vehicle bearing registration number HR-90-A-8075 in the fields situated at Fulian Khurd belonging to Balram @ Ballu along with a heavy quantity of Poppy Husk in the said vehicle. If a raid was conducted they could be apprehended and the search of the vehicle would yield a huge quantity of poppy husk.

Based on the aforesaid information a raid was conducted and the person sitting on the driver seat disclosed his name as Gurmail Singh @ Mali whereas person sitting on the conductor seat disclosed his name as Balram @ Balli. The recovery of 72 Kgs of Poppy Husk came to be effected from the back seat of the vehicle.

During the interrogation they disclosed that they had purchased the recovered poppy husk from the Manoj Kumar @ Moji (since granted bail vide order dated 06.09.2023 in CRM-M-22723-2023). Therefore, on 30.11.2022 Manoj Kumar @ Moji was arrested and Section 27-A of the NDPS Act was added. Manoj Kumar @ Moji disclosed that he had purchased 72 Kgs of poppy husk from Dharamvir @ Dharmi. During the course of investigation it was found that accused Gurmail @ Mali had been exchanging phone calls with Manoj Kumar @ Moji on 15.08.2022.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with in their proper perspective. No independent witness was joined at the

time of search and seizure. As they were first-time offenders, in custody since 20.08.2022 and none of the 24 prosecution witnesses had been examined so far, the trial of the present case was not likely to be concluded anytime soon and therefore, they were 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.***

4. On the other hand, the learned State counsel contends that commercial quantity of contraband has been recovered from the petitioners. Therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He, however, concedes that the petitioners were first time offenders, in custody since 20.08.2022, none of the 24 prosecution witnesses had been examined so far and that the co-accused had been granted the concession of bail by the Hon'ble Supreme Court.

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.

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 aforesaid 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, the petitioners were stated to be in custody since 20.08.2022 and none of the 24 prosecution witnesses had been examined so far. They are also first-time offenders with no other case registered against her. In this situation, the rigors of Section 37 of the NDPS Act can be diluted to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to a speedy trial and the case of the petitioners can be considered for the grant of bail.

9. Thus without commenting on the merits of the case, the present petitions are allowed and the petitioners-**Balram @ Balli @ Balram Jakhar** son of Sh. Ram Chander and **Gurmel @ Meli** son of Sh. Harikesh are ordered to be released on bail subject to their furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.
10. The petitioners 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 they are not involved in any other crime other than the present one.
11. The petitioners (or anyone on their behalf) shall prepare an FDR in the sum of Rs.1,00,000/- each 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 petitioners from trial without sufficient cause.
12. The petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

March 04, 2024
Vinay

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