

CRM-M-1659-2024 (O&M)

CRM-M-8774-2024 (O&M)

CRM-M-9453-2024

2024:PHHC:041232

2024:PHHC:041230

2024:PHHC:041228

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 21st of March, 2024

109+209

CRM-M-1659-2024 (O&M)

Mewa Singh

....Petitioner

Versus

State of Punjab

....Respondent

109+212

CRM-M-8774-2024 (O&M)

Jagsir Singh

....Petitioner

Versus

State of Punjab

....Respondent

213

CRM-M-9453-2024

Sukhwinder Singh @ Sulkhan

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Laghuinder S. Sekhon, Advocate
for the petitioner(s) in CRM-M Nos.1659 & 8774 of 2024.

Mr. Jashandeep S. Sandhu, Advocate
for the petitioner in CRM-M No.9453 of 2024.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

By way of this common order I intend to dispose off the afore-
captioned three bail petitions.

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2. The petitioners herein pray for grant of regular bail. All the three petitioners are accused in the same FIR i.e. F.I.R. No.159 dated 29th of July, 2021 registered for the offences punishable under Sections 22 and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Dirba, District Sangrur.

3. The contents of the FIR reads as under:

Copy of ruqa, SHO P.S. Dirba Sir today I ASI along with ASI Gurpreet Singh 2408, ASI Darshan Singh 486, ASI Jagtar Singh 562, HC Davinder Singh 532/SGR, C-2 Sandeep Singh 989/SGR, SC Naib Singh 1730/SGR, SC Manbir Singh 552/SGR in Govt. vehicle bearing registration No. PB13-AW 4112 being driven by ASI Jarnail Singh 391/SGR having laptop and Printer was present at Grain Market Dirba in relation to checking of suspicious persons and patrolling, meanwhile time around 02:20 p.m. a secret informer came present and informed I ASI that Mewa Singh son of Jit Singh resident of Selwala, Sukhwinder Singh @ Sulakhan son of Amar Singh resident of Selwala, Mohinder Ram son of Puran Ram resident of Khanewala, Jaspal Singh son of Kartar Ram, resident of Selwala and Jagsir Singh son of Leela Ram resident of Chotian in connivance with each other are habitual of bringing intoxicant tablets from Delhi and Uttar Pradesh. They are doing the business of selling the same in the areas of Dirba, Patran, Lehra, Sunam, Moonak, Khanauri etc and in the nearby villages. Today said Mewa Singh, Sukhwinder Singh Sulakhan, Jaspal Singh, Mohinder Ram and Jagsir Singh by using vehicle made Dezire of white colour bearing registration No. DL-04CAM-6768 will come from link road of village Kakuwal and will go towards the main road of village Dirba, Patran. If immediate picket can be conducted at T-point situated on the link road of village Kakuwal then the above said persons can be apprehended along with the said vehicle having in their

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possession heavy quantity of intoxicant tablets. The information is credible and reliable. The act of Mewa Singh, Sukhwinder Singh @ Sulakhan, Jaspal Singh, Mohinder Ram and Jagsir Singh by bringing intoxicant tablets for sale by using the said car fulfills the ingredients of commission of offence under section 22/25/61/85 of NDPS Act. At time around 02:40 p.m. Inspector Satnam Singh Incharge of CIA Staff B.S. Wala was telephonically informed regarding the secret information and was requested to reach at the spot or send some other competent officer at the spot. He replied that ASI Jaswinder Singh 2119 and ASI Amritpal Singh 653 are being sent to the spot for conducting further investigation. So sending the ruqa to police station Dirba by hand C-2 Sandeep Singh for registration of case under said offence against Mewa Singh, Sukhwinder Singh @ Sulakhan, Jaspal Singh, Mohinder Ram and Jagsir Singh. Kindly inform Incharge of Control Room Sangrur via e-mail, I along with fellow policemen am going to conduct the picket at link road of village Kakuwal. Today at Grain Market Dirba. Time: 03:00p.m. Sd/- ASI Jagtar Singh. xxx”

4. By now all the three petitioners are behind bars for more than 2 years, 5 months and 8 days. Counsels for the petitioners do not dispute that so far as petitioners Mewa Singh and Sukhwinder Singh @ Sulkhan are concerned, they both have criminal antecedents and in view thereof, Counsels are not pressing their bail petitions. However, *qua* petitioner Jagsir Singh, Mr. Sekhon submits that he has clean antecedents and he was merely travelling in the vehicle from which huge recovery was made and thus it will be highly debatable as to whether Jagsir Singh can be said to be in conscious possession of the contraband or not especially in the light of the fact that he has no prior antecedents of having involved in any case under the NDPS

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Act. Investigation was completed way back on 24th of January, 2022 and charges were framed in March, 2022, yet by now only one prosecution witness has been examined completely on 7th of November, 2022 and two other have been partly examined on 23rd of October, 2023 and 5th of December, 2023 out of 23 total cited witnesses.

5. Mr. Sekhon relies upon order passed by Apex Court in the case of **Rabi Prakash Vs. The State of Odisha** passed in **Special Leave to Appeal (Crl.) No(s). 4169 of 2023** decided on 13.07.2023 wherein it has been held as under :-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

6. Earlier to **Rabi Prakash's case** (supra) also Apex Court has consistently held that the prolonged incarceration has to be considered de hors bar contained under Section 37 of the NDPS Act. The Supreme Court in order dated 22.08.2022 passed by the Supreme Court in **Special Leave to**

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Appeal (Crl.) No.5530-2022 titled as "**Mohammad Salman Hanif Shaikh**
Vs. The State of Gujarat, had held as under:-

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/ concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

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

7. The above-said case was also a case under the NDPS Act, 1985 and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Supreme Court had observed that the concession of bail was granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

8. Supreme Court in order dated 07.02.2020 passed by the Hon'ble Supreme Court in **Criminal Appeal No.245/2020** titled as "**Chitta Biswas Alias Subhas vs. The State of West Bengal**" was pleased to grant

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concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as under: -

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence

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and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."

9. In order dated 05.08.2022 passed by the Supreme Court in **Criminal Appeal No.1169 of 2022 titled as "Gopal Krishna Patra @ Gopalrusma vs. Union of India,"** the Supreme Court was pleased to observe as under: -

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.

We therefore, direct that:

- (a) The appellant shall be produced before the Trial Court within five days from today.
- (b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.

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- (c) The appellant shall not in any manner misuse his liberty.
- (d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

10. In order dated 01.08.2022 passed by the Supreme Court in Special Leave to Appeal (Crl.) No.5769/2022 titled as "**Nitish Adhikary @ Bapan Vs. The State of West Bengal**" Supreme Court has observed 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 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 aforesaid terms.

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

11. State Counsel is not in position to dispute the factual assertions which are based on record.

12. Having heard rival contentions and after going through records of the case, without commenting on the merits of the case, keeping in view the incarceration suffered by the petitioner Jagsir Singh and the fact that the investigation already stands concluded and Challan stands presented, the petition i.e. CRM-M No.8774 of 2024 is allowed. Petitioner **Jagsir Singh** is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

13. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, petitioner **Jagsir Singh** shall remain bound by the following conditions :-

- (i) He shall not mis-use the liberty granted.
- (ii) He shall not tamper with any evidence oral or documentary during the trial.
- (iii) He shall not absent himself on any date before the trial.
- (iv) He shall not commit any offence while on bail.

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- (v)

He shall deposit his passport, if any with the trial Court.
- (vi)

He shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii)

He shall not in any manner try to delay the trial.
14.

In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of petitioner **Jagsir Singh**.
15.

So far as the other two bail petitions filed by Mewa Singh and Sukhwinder Singh @ Sulkhan i.e. CRM-M No.1659 of 2024 & CRM-M No.9453 of 2024 are concerned, the same are ordered to be dismissed as not pressed at this stage.
16.

Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.
17.

Pending application, if any, shall also stand disposed off.
18.

A copy of this order be kept on the files of other connected cases.

March 21, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No