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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7092-2024
Date of decision : 03.04.2024

BHUPINDER SINGH ALIAS BHINDAPetitioner

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rahul Rampal, Advocate for the petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.166 dated 09.10.2022 registered for the offences punishable under Sections 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 27/61/85 of NDPS Act 1985, under Sections 473, 379, 411 IPC, 1860 and Sections 181, 192 of the Motor Vehicle Act, 1988 added later on) at Police Station Sadar Malout, District Sri Muktsar Sahib.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. As per the contents of the FIR it has been alleged as under :

“xxx today myself ASI was present at the police station, then a written information by hand PHG Inder Singh No.23504 received in the police station, the contents of which is as under:- SHO P.S.Sadar Malout, "Fateh" today myself ASI alongwith Senior Ct.

Mandeep Singh No.1157/SMS, PHG Gurmit Singh 23481, PHG Inder Singh No.23504 in the private vehicle which was driven by myself ASI, in regard to patrolling and in search of suspicion persons were going from village Aulakh, Jhorad, Ramnagar, Souke to Khane Ki Dhab, when the police party while patrolling crossed the canal bridge Abohar Branch then from Tamkot Link Road side two Hindu Gentlemen seen coming on motorcycle, after seen the police party they tried to turn their motorcycle backside, who have kept a plastic bag between them. On suspicion they have been abducted with help of companion employees One has disclosed his name at Bhupinder Singh alias Bhinda son of Vijay Singh son of Balwant Singh resident of village Jhorad and other has disclosed his name as Golu Ram son of Mohna Ram son of Khia Ram resident of village Jhorad. The motorcycle make Hero Delux No.PB71A-6073 which was driven by Bhupinder Singh alias Bhinda and on asking about the plastic bag kept between them, they could not give satisfactory reply. I have suspicion that some intoxicant material in the plastic bag. On which after written the information, the same is being sent by hand PHG Inder The Singh No.23504 to the police station. Regular NGO be send at the spot for further action. I alongwith companion employees keep abducting both the persons. On which myself ASI after got entered the rapat no.19 dated 09.10.2022 in C.F.T.N.S. reached at the spot for further investigation in the government vehicle Scorpio No.PB-30Y- 0863 in which system of laptop and printer is installed, which was driven by Driver S. Gurbhag Singh No.657/SMS alongwith arrival PHG Inder Singh No.23504 alongwith private laptop and inkjet printer which is operate by S Gurbhag Singh no.657/SMS alongwith original information. Where ASI Kulbir Singh No.823/SMS alongwith companion employees and abducted both the persons alongwith motorcycle PB-71-A-6073 make Hero Hf Delux colour Red/Black. ASI Kulbir Singh has informted myself ASI about the situation. Myself ASI has asked the name and address of both the persons one by one. On which the driver of motorcycle has disclosed his name as Bhupinder Singh alias Ehinda son of Vijay Singh son of Balwant Singh resident of village Jhorad and other sitting pillion rider has disclosed his name as

Golu Ram son of Mohna Ram son of Khia Ram resident of village Jhorad. Myself ASI told them that my name Rajbir Singh and my rank is Assistant Inspector and I am posted at Police Station Malout as investigating officer. I have told by ASI Kulbir singh that there is some intoxicant material in the plastic bag kept by you between you, therefore, you and the plastic bag kept between both of you has to be search. But you have legal right that you can search you and your plastic bag from any Magistrate or gazetted officer, they can be call at the spot or bring you before them. On which Bhupinder Singh alias Bhinda and Golu Ram above have said that we do not want to search us and our plastic bag kept between us from any Magistrate or gazetted officer, we have full faith upon you. You can search us and our plastic bag On which notice u/s 50 NDPS Act has been served upon Bhupinder Singh alias Bhinda and Golu Ram separately and complied the same. Bhupinder singh alias Bhinda has appended his signatures on the notice served upon him in Punjabi and Golu Ram above appended his left thumb impression on the notice served upon him. Witnesses have appended their signatures on the notices. Before conduct the search myself ASI has tried to join private witness in the police party but no one met. Then myself ASI has conducted the search of plastic bag then from the bag 27 strips each containing 10/10 intoxicant tablets total 270 intoxicant tablets make Tramadol Hydrochloride Tablets 100mg Clovidol-100SR the batch no. of which TVD-20160 MFG-JUNm 2020 EXP. MAY 2023 and 10 strips each containing 10/10 intoxicant tablets total 100 intoxicant tablets make Etizolam Tablets 0.5mg ETEZOLA the batch no. of which DNTB-7021 MFG- JUN.2021 EXP, JUN 2023 recovered. Total 37 strips each strip containing 10/10 intoxicant tablets total 370 intoxicant tablets recovered. After put the intoxicant tablets into the same plastic bag and put the same into the cloth bag parcel was prepared and stamped with my stamp R.S. and sample of stamp was prepared on form M-29. After used the stamp the same has been handed over to ASI Kulbir Singh No.823/SMS and the above parcel duly stamped alongwith form M-29 and motorcycle No.PB-71A- 6073 make Hero HF Delux colour Red/Black has been taken into police possession through

separate memo of recovery. Witnesses have appended their signatures on the memo. Then myself ASI has conducted the personal search of Bhupinder Singh alias Bhinda, from the front side pocket of his Shirt currency note of Rs.100 recovered and then myself ASI has conducted the personal search of Golu Ram from him no cash etc. found. Bhupinder Singh alias Bhinda has appended his signatures in Punjabi on the memo and Golu Ram has appended his left thumb impression on thereon. Witnesses have appended their signatures. On asking by myself ASI, Bhupinder Singh alias Bhinda and Golu Ram could not produce any licence or permit with regard to keeping 370 intoxicant tablets in their possession. Bhupinder Singh alias Bhinda and Golu Ram above have committed an offence under Section 22/61/85 NDPS Act. On which after written the ruqa the same is being sent to the police station for registration of case against Bhupinder Singh alias Bhinda son of Vijay Singh son of Balwant Singh resident of village Jhorad and Golu Ram son of Mohna Ram son of Khia Ram resident of village Jhorad by hand through PHG Inder Singh no.23504. After register the case the case number be inform. Special report be issued. PCR/SMS be inform. Sector 42 NDPS Act be complied with. Myself ASI alongwith companion employees is busy in investigation at the spot. Sd/ Rajbir Singh ASI xxx”

4. Counsel for the petitioner submits that the petitioner is behind bars since 9th of October, 2022. Challan was presented way back on 4th of January, 2023 and charges were framed on 17th of February, 2023 yet till date none out of 24 cited witness has been examined.

5. Learned Counsel for the petitioner 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 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 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 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.
- (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.

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 though does not dispute the factual assertions made by counsel for the petitioner w.r.t. the stage of the trial but submits that the petitioner is involved in two more cases under the NDPS Act.

12. Faced with the situation, counsel for the petitioner submits that the petitioner has earned acquittal in both the cases.

13. I have heard counsel for the parties and have gone through records of the case.

14. 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 already suffered by the petitioner and the fact that the investigation already stands concluded and Challan stands presented, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

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

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

16. 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 the petitioner.

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

April 03, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No