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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10707-2024
Decided on : 05.09.2024

Manjit Kaur @ Akki

. . . Petitioner

Versus

State of Punjab

. . . Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present : Mr. N.S. Dandiwal, Advocate
for the petitioner

Mr. R.S. Thind, DAG Punjab

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.93 dated 27.10.2022 registered under Sections 21, 22, 29, 61, 85 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (Section 411 IPC added later on) at Police Station Ajitwal, District Moga.

2. The facts in brief are that on 27.10.2022, at about 2:00-2:30 p.m. near Village Kokri Kalan, District Moga, co-accused Amritpal Singh and Harmesh Singh were found in conscious possession of 30 gram of Heroin and 280 loose intoxicating tablets containing salt Etizolam which falls under the ambit of commercial quantity. During the course of investigation co-accused Amritpal Singh suffered disclosure statement and the petitioner was arrayed as accused.

3. Learned counsel for the petitioner *inter alia* submits that the



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petitioner has been falsely implicated in the present case and she has been nominated only on the basis of disclosure statement made by the co-accused. Learned counsel further submits that the petitioner has already undergone an actual custody of 01 year, 03 months and 22 days.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody certificate, the petitioner has undergone actual custody of 01 year, 03 months and 22 days. He further submits that there are five more cases pending against the petitioner and in one case she has been convicted. He further submits that the charges in the present case were framed on 14.12.2023 and out of 19 prosecution witnesses, one prosecution witness has been examined. The next date of hearing before the trial Court is 23.09.2024. He, however, submits that in view of strict rigors of Section 37 of the NDPS Act and serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. In ***Rabi Prakash Vs. The State of Odisha*** passed in Special Leave to Appeal (Crl.) No(s). 4169 of 2023 decided on 13.07.2023 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



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must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

7. 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."

8. 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,



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115 bottles (100 ml. CRM-M-8369-2024 4 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.

9. 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



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Counsel for the State of West Bengal and CRM-M-8369-2024 6 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 aforestated terms.

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

10. In the present case, the petitioner was not apprehended at the spot and no recovery was effected from the her. It is only on the basis of the disclosure statement of the co-accused that the petitioner has been nominated. The alleged recovery is of non-commercial quantity. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 11.01.2023 and only one of the prosecution witness has been examined so far.



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established during the course of the trial. Admittedly, charges have been framed on 14.12.2023 and out of 19 prosecution witnesses, only one prosecution witness has been examined till date. The petitioner has undergone actual custody of 01 year, 03 months and 22 days and there are five more cases pending against her, however, in one case she has been convicted.

12. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as “***Baljinder Singh alias Rock vs. State of Punjab***” decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

13. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on her furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

(i) The petitioner will not tamper with the evidence during the trial.

(ii) The petitioner will not pressurize/intimidate the prosecution witness(s).



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(iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

(iv) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.

(v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

14. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

15. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

05.09.2024
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(KIRTI SINGH)
JUDGE

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