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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-12426-2023
Date of decision : 04.01.2024

Balraj Kaur @ Pinki Petitioner

versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Jaswinder Singh Arora, DAG, Punjab
with ASI Jasbir Kumar.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.82 dated 06.07.2020, registered for the offence punishable under Section 21 of NDPS Act, 1985 (Section 29 of NDPS Act added later on) at Police Station STF Mohali, District SAS Nagar.
2. Short reply by way of affidavit of Yogesh Kumar, PPS, Deputy Superintendent of Police, Special Task Force, Jalandhar Range, Jalandhar on behalf of the respondent-State has been filed. The same is taken on record.
3. As per the case of the prosecution, secret information was received against Paramjit Kaur @ Bhola that she indulging in selling of narcotics. Resident of Paramjit Kaur @ Bhola was raided and 04 persons namely Paramjit Kaur @ Bhola, 02 gents and 01 lady were found. 250

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gms of heroin was recovered from Paramjit Kaur @ Bhola. 100 gms of heroin was recovered from Soma, the other lady. Likewise, 100 gms of heroin was recovered from Amrik and 50 gms of heroin was recovered from Sandeep Kumar-the other 02 gentlemen leading to registration of case for offence punishable under Section 21 of NDPS Act. On the basis of disclosure made by Paramjit Kaur @ Bhola while in police custody, present petitioner and one Gurvinder Singh were nominated. Police officials found that the petitioner i.e. Balraj Kaur @ Pinky was residing as a tenant in House No.420-SF, Eledco Green Colony, Nakodar Raod, Jalandhar. Instead of serving notice upon the petitioner who was in possession of the property as tenant, notice was served upon owner. It is further case of the prosecution that owner was also in possession of a key and after obtaining key of the said house from him, the house was searched. One iron almirah was found locked. One key maker namely Mohan Singh was called who unlocked the almirah which led to further recovery of Rs.3,50,290/- and 05 polythene bags containing heroin total amounting to 333 gms. Recovery memo dated 08.07.2020 reads as under:-

“In the presence of witnesses flat no. 420 SF of Aldico Greens Colony and in presence of its owner Amrik Kumar son of Bishan Dass, resident of house no. 174, Khurla Khingra and opposite tower point colony Jalandhar and the owner of the said house was being given a search warrant issued by the Court of Shri Rahul Kumar PCS PM JJB SRM cum JMJC Jalandhar and then the search of the flat no. 420 SF after obtaining the keys of the said house from him and after opening the house the search of the same

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was being done. The iron Almira which was being closed and after obtaining the keys from the key maker Mohan Singh, the said iron Almirah which was being closed was being opened and checked and from Almirah two ladies purse were recovered from which 37 notes of Rs 2000/- total 74,000/- 540 notes of 500 rupees total. 2,70,000/-, 24 notes of Rs. 200/- each total 4800/-, 9 notes of Rs 100/- each total 900/- and 6 notes of 50/- total 300/-, 3 notes of Rs. 20 each total 60/- and 23 notes of Rs. 10 each total 230/- and the entire amount of drug money came out to the Rs. 3,50,290/- and the second polythene was being searched and from which heroin was recovered and the weight of the same after weighing on electronic weighing machine came out to be 64.09 grams. The second polythene of heroin was being weighed along with the weight of the polythene and the weight then came to be 75.68 grams. The third polythene was being weighed and the weight of the same was came out to be 132.12 gram, fourth polythene was being weighed and the weighed came out to be 17.43 grams and 5th polythene along with heroin was being weighed and the weight of the same came out to be 48.28 grams. All the said polythenes were being put in one polythene and the combined weight came out to be 333 grams of heroin and the four empty polythenes was being put in separate polythene. The recovered 333 grams of heroin in plastic box and the parcel was being prepared on which SI affixed his seal BL on the said parcel and DSP Ajay Singh affixed his seal AS. Separate memo was prepared and after affixing his seal SI handed over the same to ASI Sikandar Singh 2539/Jal and DSP kept the same with himself. Recovery memo is prepared.”

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4. On being asked by the Court, Mr. Arora submits that the notice could not be served upon the petitioner as she was absconding. At the same time, he also admits that no such notice was even pasted on the premises.

5. Learned counsel for the petitioner submits that apart from the aforesaid illegality of searching the house of the petitioner in her absence if the case of the prosecution is believed as it is being projected, it has come on record that the house in question was not in exclusive possession of the petitioner. However, Mr. Arora submits that the house was searched only after obtaining search warrants and he admits that there was no respectable persons of the locality associated with the search.

6. Petitioner is behind bars for last more than 03 years, 03 months and 03 days. By now, only 17 cited witnesses could be examined. Mr. Arora has opposed the bail plea on the ground that the petitioner is facing 07 more cases which includes 05 under the NDPS Act.

7. Faced with the situation, Mr. Chaddha refers to pleadings raised in the bail plea to submit that the petitioner though was convicted in FIR No.77 dated 23.05.2015, but the sentence was reduced to already undergone. Likewise, in FIR No.120 dated 23.05.2018, qua offence punishable under Section 21 of the NDPS Act, the petitioner has earned acquittal. Similarly, in FIR No.68 dated 26.04.2017, registered for offence punishable under Section 21 of NDPS Act, the petitioner has earned acquittal. In FIR No.213 dated 28.07.2005 also the petitioner has earned acquittal. So far as FIR No.81 dated 05.06.2019 is concerned, the petitioner has nominated on the basis of disclosure and there is no recovery effected from her.

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8. 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.”

9. 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."

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10. 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.

11. 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 phensydril 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,

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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."

12. 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.

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The appeal is allowed in aforesaid terms."

13. 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 aforestated terms.

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

14. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the trial is proceeded at snail's pace, the present petition is allowed. The petitioner is ordered to be released on bail on her furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by

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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.*

15. 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.

16. Ordered accordingly.

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

(PANKAJ JAIN)
JUDGE

04.01.2024
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Whether speaking/reasoned : Yes

Whether Reportable : No