

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

CRM-M-22038-2023

Date of Decision:-11.01.2024

Mormal.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Mr. Rajesh Lamba, Advocate for the Petitioner.

Mr. Ravish Kaushik, Additional Advocate General,
Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.161 dated 03.05.2022 under Sections 20(C), 27-A, 29, 68-F of the NDPS Act, 1985 registered at Police Station Ferozepur Jhirka, District Nuh.

2. The brief facts of the case are that secret information was received to the effect Ansar and Mormal (petitioner) were in the business of supplying Ganja and would be travelling in a vehicle bearing registration number HR-74A-8269 make Canter from Ferozepur Jhirka towards Sohna and if a barricade was set up they could be apprehended.

Based on the aforementioned information a barricade was set up and the vehicle was intercepted. The driver of the vehicle disclosed his name as Ansar and the cleaner as Mormal. 200Kgs of black ash was found loaded in the said truck. However, on investigation the arrested accused disclosed

that the contraband had been dropped in a dry dug well in village Sakras. The truck driver and cleaner were taken to the dug well and 10 bags of cannabis were recovered totalling 313 Kgs 100 grams Cannabis (Ganja). Ansar and Mormal were arrested in the present case.

Both the arrested accused were interrogated on 13.07.2022. They disclosed the names of their co-accused. On the basis of the statement under Section 161 Cr.PC of PWs Ajit and Ajay the vehicle involved in the crime was found to have been taken on rent by accused Surender @ Sarpanch. He was summoned on the basis of production warrants. The bank accounts of Surender Sarpanch and his wife were seized and revealed huge transactions of payments and withdrawal in connection with the illegal and unlawful business of narcotics and contraband. Vehicle no.HR-74-A 8269 was found to be owned by Wahid who had given the same to accused Surender @ Sarpanch on rent at the rate of Rs.1 lac per month.

Surender @ Sarpanch was in judicial custody in case FIR No.40 of 2021 under the NDPS Act P.S. Bilasur, District Gurugram. He was summoned on production warrants and joined in the investigation. He got recovered two mobile phones and one dongle after which Section 27-A of the NDPS Act was added on the examination of the bank account of the accused.

The aforementioned accused also disclosed about the involvement of Sanjiv Shah resident of Bihar presently residing at Delhi, Anwar resident of Orissa, Parveen @ Gora, Subash, Rahul, Sandeep and Mallu @ Nitin.

Parveen was arrested on 31.07.2022 and admitted that the accused Rahul and Subash were with him when he visited Orissa to bring the contraband.

Co-accused Sanjiv Shah was arrested on 01.08.2022 and got recovered an Aadhar Card, driving licence, ATM Cards, PAN Cards and Rs.20,800/-. He also got recovered two mobiles phones used in the commission of crime and vehicle no.DL-12-CM-80852 along with a travel bag with jewellery of gold and silver.

Anwar Khan was arrested on 05.08.2022 and got recovered 02 mobile phones. He also disclosed that he had handed over the vehicle with the contraband to the co-accused Parveen and his co-accused.

During the course of investigation, it transpired that the accused Parveen and Nitin @ Mallu were bringing the canter bearing no.HR-74A-8269 when it was snatched by Ansar, Mormal and the co-accused. Cannabis weighing approximately 600Kg was taken away by the co-accused who were yet to be arrested and the canter bearing no.HR-74A-8269 was being brought to Mewat by accused Mormal and Nitin @ Mallu who were apprehended by the CIA Police Tauru.

Wahid, Ishrar, Sahid Ahmed, Anish, Ikrum, Nitin @ Mallu, Mohd. Sakir and Mustkim are yet to be joined in investigation in the present case.

3. 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 he was a first-time offender, in custody since 03.05.2022 and only 03 out of 44 prosecution witnesses had been examined so far, the trial of the present case was not likely to be concluded anytime soon and therefore, he was 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 petitioner. 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 petitioner was a first time offender, in custody since 03.05.2022 and only 03 out of the 44 prosecution witnesses had been examined so far.

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 petitioner is stated to be in custody since 03.05.2022 and only 03 out of 44 prosecution witnesses have been examined so far. He is also a first-time offender with no other case registered against him. 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 petitioner can be considered for the grant of bail.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Mormal** son of Sh. Mehrab is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner 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 he is not involved in any other crime other than the present case.

11. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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 petitioner from trial without sufficient cause.
12. The petition stands disposed of.

(JASJIT SINGH BEDI)

JUDGE

January 11, 2024

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>