

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-29183-2023
Date of Decision: 13.03.2024

Gurpreet Singh @ Gopa
..... Petitioner

Versus

State of Punjab
..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Nitin Meel, Advocate
for the petitioner.

Mr. Ankit Grewal, DAG, Punjab.

HARSH BUNGER J.

1. This is a second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Gurpreet Singh @ Gopa) for grant of regular bail in case bearing FIR No.205 dated 22.10.2021, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the N.D.P.S. Act'), registered at Police Station Lalru, District S.A.S. Nagar, Mohali.
2. The first petition (CRM-M-52692-2022) was withdrawn by learned counsel for the petitioner vide order dated 16.01.2023

3. In pursuance of an advance notice served upon the State of Punjab, short reply by way of affidavit dated 19.02.2024 of Mr. Vaibhav Chaudhary, I.P.S., Assistant Superintendent of Police, Sub Division Dera Bassi, Tehsil Dera Bassi, District S.A.S. Nagar, Mohali has been filed on behalf of State of Punjab, which is already on record.

4. Custody certificate dated 12.03.2024 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

5. Briefly, the aforesaid case FIR was registered on the basis of a *ruqa* prepared by Sub Inspector Hardeep Singh, who stated that when on 22.10.2021, he along with his fellow employees departed on a private vehicle for patrolling and checking duty and laid barricades near Village Jharmadi border then at about 5:40 P.M., a person (petitioner) was seen coming from Ambala side with a bag on his shoulder, who, upon seeing the police party, became nervous; however, he was apprehended by the police party. Thereafter upon enquiry, the aforesaid person disclosed his name as Gurpreet Singh @ Gopa (petitioner) s/o Bhupinder Singh.

6. After following the due procedure, the search of petitioner and his *pithoo* bag was conducted, whereupon 475 strips, containing 60 tablets each (total 28500 tablets) of LOMOTIL were recovered from the conscious possession of petitioner, for which he could not produce any license or permit. The recovered tablets were converted into parcel and sealed and they were taken into police possession.

7. As per status report, the contraband recovered from the conscious possession of petitioner is stated to be commercial in nature.

8. Learned counsel for the petitioner submits that the petitioner is

innocent and he has been falsely implicated in the instant case. It is submitted that the petitioner has no concern with the alleged crime and alleged recovery in the instant case is planted one. Learned counsel for the petitioner contends that even if the allegations levelled against the petitioner in the instant case are taken to be true then also there had been non-compliance of the mandatory provisions of the N.D.P.S. Act; and all the prosecution witnesses cited in the instant case are the interested witnesses; and no private or independent witness was joined by the police.

9. Learned counsel for the petitioner submits that the learned Judge, Special Court, S.A.S. Nagar, Mohali has wrongly dismissed the application for regular bail filed on behalf of the petitioner vide order dated 01.04.2022. Learned counsel further submits that the petitioner is not involved in any other case and he has undergone actual custody in the instant case for a period of two years, four months and nineteen days (as on 12.03.2024); investigation in the case is complete, challan stands presented on 31.03.2022 and charges have been framed on 19.05.2022. It is stated that out of the total eleven prosecution witnesses, only two prosecution witness have been examined; trial in the case is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing.

Accordingly, prayer for grant of regular bail is made.

10. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the intoxicant material recovered in the instant case falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. Learned State counsel submits that in case the petitioner is released on bail then he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the present petition has been made.

11. However, learned State counsel while referring to the custody certificate has submitted that there is no other case pending against the petitioner and he has undergone actual custody in this case for a period of two years, four months and nineteen days (as on 12.03.2024). It is also conceded by learned State counsel that investigation in the case is complete, challan stands presented and charges have also been framed.

12. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

13. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly gainful reference can be made to judgments rendered by Hon'ble Supreme Court in “Chitta Biswas @ Subhas v. State of West Bengal” (Criminal Appeal No. 245 of 2020 dated 07.02.2020), “Nitish Adhikary @ Bapan v. State of West Bengal” (Special Leave(Crl.) No. 5769 of 2022), “Shariful Islam @ Sarif v. State of West Bengal” (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022), “Karnail Singh v. State of Odisha” (Criminal Appeal No. 2027 of 2022 dated 22.11.2022), “Karim

Adaldar v. State of West Bengal” (Special Leave to Appeal (Crl.) No. 8653 of 2022), “Dheeraj Kumar Shukla Vs. State of Uttar Pradesh” (SLP No.6690 of 2022 dated 25.01.2023) and “Hasanujjaman and others Vs. The State of West Bengal” (Special Leave Appeal (Crl.) No(s).3221 of 2023 dated 04.05.2023).

14. Concededly, the alleged recovery in this case falls under the category of 'commercial quantity' and bar of Section 37 of the N.D.P.S. Act is attracted, however, while dealing with Section 37 *ibid*, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence.

15. In the peculiar facts and circumstances of the present case and on an assessment of material on record, especially the fact that petitioner is not involved in any other case, more so under the N.D.P.S. Act, and the alleged recovery having been effected from a *pithoo* bag (black colour), I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence and he is unlikely to commit an offence under the N.D.P.S. Act, while on bail.

16. Furthermore, the petitioner is in custody for a period of two years, four months and nineteen days (as on 12.03.2024). Investigation in the case is complete, challan stands presented on 31.03.2022 and even charges have been framed on 19.05.2022. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

17. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state

that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

18. In view of the above discussion, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial.

19. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be

forfeited as per law, in case the petitioner remains absent from trial without

any sufficient cause.

20. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

21. The petition is accordingly disposed of.

22. All pending application(s), if any, shall also stand closed.

13.03.2024

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No