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

Sr. No.223**CRM-M-32706-2024 (O&M)****Date of decision : 10.12.2024****Jal Singh @ Jalle**

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Baljeet Beniwal, Advocate for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

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.519 dated 26.12.2023, under Sections 22(b), 22(c) & 29 of NDPS Act, 1985, registered at Police Station Gadpuri, District Palwal.

2. The translated version of the FIR is reproduced below:-

“To Station House Officer Police Station Gadpuri District Palwal. Jai Hind, Today I ASI alongwith HC Munfed 772 and C. Vinod 498/Palwal, Sasheed 472/PWL EHC Govt. Vehicle No. HR 30GV 3614 driver ESI Devidayal 86/PWL was present at Dhatir Ganda Nala, that secret informer met and informed that Jalsingh Jalle alias Virendra resident of Dhatir works as son a of drug dealer, who after taking medicines/injections from village Dhatir, he will ride his motorcycle CD Deluxe Color Black No. HR 30-V-6257 and go from Dhatir receiving to Ghudhera information Palwal, of (medicines/injection), I ASI prepared a Under Section 42 NDPS

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and sent Ct. which on narcotic notice Vinod No.498/PVWL to Police Station Gadpuri to inform the higher officials for information. That I ASI informed my team about the information and started the blockade on Sohna Palwal Road Nala Dhatir after relieving the secret informer the pedestrians were asked to join the raid, but all of them left the spot by stating legitimate compulsion, motorcycle was seen after their some time coming from the side of Dhatir, who, seeing the police party in front, turned his motor back and started running. I ASI with the help of a fellow officials nabbed the motorcycle driver, whose name and address was asked and he revealed his name as Jal Singh alias Jalle son of Virendra, resident of Dhatir, District Palwal. I ASI told the person that we suspect that there is narcotic substance with you OΣ in your motorcycle, which is to be searched, to person Jal singh, a notice was given by preparing Section 50 NDPS ACT and the notice was read out and explained that you have the right according to the law in the NDPS Act that you can get yourself searched done by any gazetted officer. A gazetted officer can be called on the spot as per your wish. In response to the notice, person Jal Singh said that I am educated and replied in writing on the notice that I want to get my motorcycle searched by a gazetted officer who after talking to the ASI and inquiring about the duty magistrate of NDPS ACT contacted from phone number 9813191871 to the mobile number 8930202016 of Duty Magistrate Shri Sakir Hussain Deputy Superintendent of Police Palwal at 8.34 PM and made aware about the situation to Duty Magistrate Sakir Hussain DSP Sahab and was requested to come to the spot which the Duty Magistrate told that I am coming to the spot in a while who has come on the spot at the same time Ct. Vinod No. 498/PWL has come on the spot and the notice DD NO 27 has been handed over to me who after waiting for about 20-25 minutes, duty Magistrate came to the

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spot which I told the Duty Magistrate about the situation earlier. Informed and presented notice 50 N.D.P.S. Act to Duty Magistrate Saheb which has been verified by Duty Magistrate Saheb who Shri Duty Magistrate Sakir Hussain on the spot after interrogating the above person Jal singh alias Jalle who was arrested on the spot, I ASI took searched and after preparing the search list and ordered I ASI to take the clothes worn by person which I ASI searched person, from the right pocket of the pants he wore, 6 strips of drug injections were found, which were counted, then 15 injections of DIAZEPAM INJECTION I.P. 2 ML and 15 INJECTIONS OF BUPRENORPHINE INJECTION IP 2 ML WERE FOUND, which i took photographs of recovered injections in front of the duty magistrate saheb and sent to the Drug Inspector SHRI SANDEEP GAHLAN DCO PALWAL 9813191871 from MY PHONE NUMBER 8510021516, Mr. Sandeep Mahlan DCO Palwal told that I cannot come to the spot for some reason, you send photos of recovered intoxicant injections on my whatsapp, which I ASI sent photos of narcotic injections to DCO sahib's phone from his phone, which DCO Saheb Palwal checked the photos of narcotic injections and NDPS. He told the crime of ACT and said that I should give you an opinion in writing later in this regard. Shri Mann Duty Magistrate Saheb asked to produce the license or permit regarding intoxicant injection from the above which he could not present, as per the direction of the Duty Magistrate, the memo of recovered injections were prepared at the same time white cloth Palanda cloth was prepared, I put my stamps of UK and DSP Saheb put his stamp HD on Palanda, and kept the seal with himself and I ASI After using my stamp was handed over to C. Vinod No. 498/PWL which I took the Palanda cloth of banned narcotic injections as proof through recovery memo in police Possession and memo was signed by the accused and the witness. And Duty

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Magistrate Sakir Hussain verified the memo that the above Jalsingh person committed the 22 (C)-61-85, alias Jalle has offence under Section 22 (B), NDPS Act by keeping prohibited narcotic injectable without any license and permit in his possession which is being written from his personal laptop, printed in PAN drive, signed and sent to Police Station Gadpuri of EHC Receipt No. 472 for registration of the case. The case should be registered and informed by form or other investigators should be sent on the spot for further proceedings of the case. And prepare a special report and send it to the service to higher officers as per rules, I am present on the spot with fellow employees and accused. Today- SOHNA PALWAL ROAD DHATIR GANDA NALA SD- ASI Updesh Kumar AVT Staff Hathin. DATE 26-12-2023 AT 9.30PM Police Proceedings.”

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and he is a man of clean antecedents. The petitioner has undergone an actual custody of 11 months and 14 days and there is no other criminal case registered against him.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 11 months and 14 days and it is not disputed that there is no other criminal case pending against him. He on instructions submits that charges were framed on 16.08.2024 and out of 14 total prosecution witnesses, none has been examined. He further submits that in view of strict rigors of Section 37 of

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the NDPS Act and serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Counsel for the petitioner further places reliance upon **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. Heard the rival submissions made by learned counsel for the parties.

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:-

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"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, 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.

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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 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

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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

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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."

11. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the petitioner has undergone an actual custody of 11 months and 14 days and there is no other case pending against him. Charges were framed on 16.08.2024 and out of 14 total prosecution witnesses, none has been examined. The investigation is complete and further incarceration of the petitioner will not serve any purpose and will be violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgment of Apex Court in **"Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22"**.

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12. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Apex Court in **“Abdul Rehman Antulay and others v. R.S. Nayak and another”, 1992(2) RCR (Criminal) 634** observed that Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.

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 his 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).
- (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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.

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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.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

10.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No