

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-34823-2023 (O&M)
Date of decision: 21.02.2024

Sandeep.....Petitioner.

Versus

State of Punjab....Respondent.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Sukhwinder Singh, Advocate,
for the petitioner.

Mr. Ankit Grewal, DAG, Punjab.

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SANJIV BERRY, J. (ORAL)

1. Custody certificate dated 20.02.2024 filed by learned State Counsel in Court today is taken on record.
2. Instant petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR (Annexure P-1). Details of the FIR are as under: -

FIR No.	Dated	Sections	Police Station
132	11.09.2021	18 and 29 of the NDPS Act	Badhni Kalan, District Moga

3. It is, *inter alia*, contended by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated

in this case. He contends that the petitioner is in custody since 11.09.2021 and out of 15 witnesses cited by the prosecution, only 02 witnesses have been examined till date. He further contends that the co-accused namely Sanjay has already been granted concession of regular bail vide order dated 20.09.2023 passed in CRM-M-45961-2023, titled '*Sanjay vs. State of Punjab*', and the case of the petitioner is at same footing and at par with that of the co-accused, namely Sanjay (*supra*). He has also referred to the order dated 22.08.2022 passed by the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) No.5530-2022** titled as "**Mohammad Salman Hanif Shaikh Vs. The State of Gujarat**", 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**", order dated 05.08.2022 passed by the Hon'ble Supreme Court in **Criminal Appeal No.1169 of 2022** titled as "**Gopal Krishna Patra @ Gopalrusma Vs. Union of India**", order dated 01.08.2022 passed by the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) No.5769/2022** titled as "**Nitish Adhikary @ Bapan Vs. The State of West Bengal**".

4. Learned State counsel while referring to the custody certificate dated 20.02.2024 has opposed the concession of bail to the petitioner, however, he has not disputed the factual matrix of the case and also the fact that the attribution to the petitioner is at par with that

of the co-accused, namely Sanjay (*supra*), who has since been granted the concession of bail vide aforesaid order dated 20.09.2023.

5. Considering the respective arguments and perusing the record, it transpires that FIR in question was registered against the petitioner and the co-accused, namely Sanjay (*supra*) while being apprehended carrying in their conscious possession of 2.6 kg of *opium*. After conclusion of investigation, challan was presented in the Court and the prosecution cited as many as 15 witnesses and as per the reply submitted by the State, only 02 witnesses have been examined till date and the similarly situated co-accused, namely Sanjay (*supra*) has already been granted concession of regular bail vide aforesaid order dated 20.09.2023.

6. Keeping in view the abovesaid facts and circumstances as well as the law laid down in the above cited judgments especially on principle of parity with the co-accused, namely Sanjay (*supra*), this Court deems it appropriate to grant the concession of regular bail to the petitioner. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act, 1985.

7. Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate,

subject to him not being required in any other case. 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 an accused, 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.*

8. 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.

9. It is further made clear that in case the petitioner is found involved in any case under the NDPS Act, after his release on bail, it will be open for the prosecution to move an application for cancellation of his bail in accordance with the law.

10. However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case

which are only for the purpose of adjudicating the present bail application.

11. Petition stands allowed.
12. Pending miscellaneous application, if any, also stands disposed of.

21.02.2024
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(SANJIV BERRY)
JUDGE

- i) Whether speaking/reasoned?Yes/No
- ii) Whether reportable?Yes/No