

CRM-M-35363-2023 (O & M)

::1:-

(213) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35363-2023 (O & M)
Date of Decision: 20.01.2024

Mohammad Irshad

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Partap Singh, Advocate,
for the petitioner.

Mr. Rajiv Goel, DAG, Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C read with Section 167(2) Cr.P.C. is for the grant of regular bail to the petitioner in case bearing FIR No.313 dated 29.05.2021 under Section 18 of the NDPS Act (Sections 27A, 29, 61 and 85 of the NDPS Act alongwith Section 201 IPC added later on) registered at Police Station Shahabad, District Kurukshetra.

2. The brief facts of the case are that Mohammad Irshad (petitioner) and Mohammad Ashfak @ Mhammad Ashfaq were arrested as they were found in possession of 5 kgs. 100 grams of opium.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act had not been complied with in their proper perspective. No independent witness was joined at the time of search

CRM-M-35363-2023 (O & M)

::2::-

and seizure. As he was a first-time offender, in custody since 29.05.2021 and none of the 24 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,* *moreso*, when two co-accused, namely, Mukesh Kumar @ Vekuli Yadav and Ajay Ram had been granted the concession of bail by this Court vide orders dated 26.04.2022 and 11.05.2023 (Annexures P-7 and P-9 respectively).

4. On the other hand, the learned State counsel contends that commercial quantity of contraband had 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 29.05.2021, that none of the 24 prosecution witnesses had been examined so far and two co-accused, namely, Mukesh Kumar @ Vekuli and Ajay Ram had been granted the similar relief.

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 aforestated 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. Admittedly, in ‘**Nitish Adhikary @ Bapan (supra) and Hasanujjaman & others (supra)**’, the accused therein had been granted the concession of bail by the Hon’ble Supreme Court after they had undergone approximately one and a half years of custody. They were also first-time offenders as is borne out from the orders.

9. In the instant case, the petitioner is stated to be in custody since 29.05.2021 and none of the 24 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, moreso, when his two co-accused have been granted the concession of bail.

10. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Mohammad Irshad 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.

11. 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.
12. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- 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.
13. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 20, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No