

CRM-M-36001-2023 (O & M)

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

CRM-M-36001-2023 (O & M)
Date of Decision: 15.01.2024

Lakhwinder Singh @ Lakha

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Manmeet Singh, Advocate,
For Mr. Yashpal Thakur, Advocate, for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in this third petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.49 dated 13.04.2021 under Section 22(c) and later on added Section 29 of the NDPS Act registered at Police Station Sadar Kotkapura, District Faridkot.

2. The brief facts of the case are that while the police party was on patrolling duty, from the front side one shorn hair person was seen coming carrying a red and black colour kit bag on his shoulder. He was asked to stop but he got confused, turned-around and went to the other side. On suspicion, he was apprehended and disclosed his name as Lakhwinder Singh @ Lakha (petitioner). From one pocket of the bag, the recovery of intoxicant tablets

CRM-M-36001-2023 (O & M)

::2::-

make Tramadol Celcidial-100 SR having batch No.21AT005 MFG. Apr 2021 Exp.Mar 2023 MRP Rs.192.50 total 300 strip/leaf, each strip having 10 tablets totalling 3000 intoxicant tablets and from the other pocket of the bag, make Tramadol Celcidial-100 SR having batch No.UFT921 MFG.04.2021 Exp. 03.2023 MRP Rs. 206.30 Total 200 strip/leaf, each strip having 10 tablets each totalling 2000 intoxicant tablets and from the small pocket of the kit bag, intoxicant tablets make Alprazolam Tablets IP 0.5 MG batch No.PCCAA 755 MFG Date 01-2021 Expiry Date 12-2023 MRP 22.51 total 120 strips/leaf having 10 tablets in each leaf totalling 1200 intoxicant tablets were recovered.

3. During the course of investigation, Lakhwinder Singh @ Lakha disclosed that he had been provided the contraband by a person who was running a medical store whose name he did not know. He could, however, identify the supplier. On verification of the mobile number provided by Lakhwinder Singh @ Lakha, the identity of user was revealed to be Amit Malik (since granted bail vide order dated 08.05.2023 passed in CRM-M-40386-2021). Subsequently, he came to be nominated as an accused and an offence under Section 29 of the NDPS Act came to be added. On his arrest, Amit Malik got recovered two bulk parcels i.e. one parcel marked Sr. No.01 containing 600 strips of Alprazolam Tablets IP 0.5 each containing 10 intoxicant tablets and from another parcel marked Sr. No.02 containing 500 strips each containing 10/10 tablets make of Tramadol Celcidial 100 SR totalling 5000 tablets.

CRM-M-36001-2023 (O & M)

::3:-

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 and seizure. As the petitioner was in custody since 13.04.2021 and only 07 out of the 22 prosecution witnesses had been examined, the trial of the present case was not likely to be concluded anytime soon. In one other case registered against the petitioner bearing FIR No.53 dated 05.04.2019 under Sections 22/61/85 of the NDPS Act, Police Station Lambi, he is on bail. He, therefore, prays that 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'*, the petitioner was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, contends that the petitioner was an accused in one other case under the NDPS Act. Therefore, he was not entitled to the concession of bail. He, however, concedes that the petitioner was in custody since 13.04.2021, only 07 of the 22 prosecution witnesses had been examined so far and in the one other case registered against him, he had been granted the concession of bail.

CRM-M-36001-2023 (O & M)

::4::-

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.”

CRM-M-36001-2023 (O & M)

::5:-

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

CRM-M-36001-2023 (O & M)

::6:-

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 present case, the petitioner has undergone more than two and a half years of custody. In the one other case registered against him, he has been granted the concession of bail. In view of the fact that the petitioner has undergone a substantial period of custody, 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 a co-accused, namely, Amit Malik has been granted the similar concession.

CRM-M-36001-2023 (O & M)

::7:-

10. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Lakhwinder Singh @ Lakha 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/case(s) other than the case(s) referred to in this order.

12. In addition, the petitioner (or anyone on her 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.

13. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

November 15, 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No