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

Sr. No.229**CRM-M-37875-2024 (O&M)****Date of decision : 04.12.2024****Raviratinder Singh @ Ravi**

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Divya Sharma, Advocate for the petitioner.

Mr. Vinay Kumar Malhotra, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.190 dated 04.10.2023, under Section 21 (C) of NDPS Act, 1985, registered at Police Station Gharinda, District Amritsar.

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

"Station House Officer, Police Station, Gharinda, Sat Sri Akaal. Today 1, ASI along with ASI Major Singh 1184/Asr.-R, ASI Hardeep Singh 282/Asr.-R. Senior Constable Davinder Singh 1385/Asr.-R, Senior Constable Paramjit Singh 585/Asr.-R, Constable Karanjit Singh 1567/Asr.-R along with laptop, printer on official vehicle Bolero bearing No. PB-02-CR-2423, which was being driven by ASI Gurpreet Singh 272/Asr.-R were on patrolling duty and for checking of suspicious persons in the area of Police Station Gharinda from Attari towards Atalgarh, Mode Dhanoe etc. When the police party reached near Pir Baba Gulabh Shah Village Attari at about 03:45 AM, the secret informant informed me ASI that Ravitinder Singh @ Ravi son of Randhir Singh resident of village Dhanoe Khurd, Police Station Gharinda District

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Amritsar, has been indulging in the business of selling Heroin on a large scale for a long time. Even at present, the aforesaid Ravitinder Singh @ Ravi is waiting for someone standing near the gate of village Ratan Kala to supply Heroin. If a raid is conducted immediately near the gate of the turn of Village Ratan, the aforesaid Ravitinder Singh @ Ravi can be captured with heavy quantity of Heroin. Finding the aforesaid information true, solid and reliable, I, ASI through phone informed Sh. Gurinderpal Singh PPS DSP, Sub Division, Attari regarding the aforesaid, on whose instructions, I, ASI along with fellow officials, after briefing them about the secret information, reached near the gate at the turn of Village Ratan where on the left hand side one Sikh youth was seen standing wearing a navy blue turban, who on seeing the police party became perplexed and started walking quickly towards Village Ratan. Whereupon, I, ASI with the help of fellow police officials, immediately captured the aforesaid Sikh youth and enquired his name. Then, he told his name and address as Ravitinder Singh @ Ravi son of Randhir Singh, resident of Village Dhanoe Khrud, Police Station Gharinda, District Amritsar. That I introduced myself to suspect Ravitinder Singh @ Ravi and stated 'I ASI Harjinder Singh, currently posted at CIA Staff, District Amritsar Rural, I am wearing my uniform and my name plate is affixed on the same, I have been informed that you are in possession of Heroin. In connection thereof, your search has to be conducted but you have the legal right that you can get your search conducted from some Gazetted Officer or in the presence of some Magistrate. The same can be arranged at the spot and if you wish if some Gazetted Officer or some Magistrate sits nearby, you can be taken to them. On which suspect Ravitinder Singh @ Ravi stated that I want my search to be conducted in the presence of a Gazetted Officer. Kindly call some Gazetted Officer at the spot. Thereafter, notice under Section 50 of NDPS Act was served upon him. Thereafter, I, ASI again called Sh. Gurinderpal Singh PPS DSP, Sub Division, Attari, on his mobile phone at about 04:10 PM from my mobile phone and requested him to reach at the spot after informing him about the circumstances. That about 04:35 PM, the DSP reached on the spot and the DSP introduced himself to suspect Ravitinder Singh @ Ravi and stated that 'I DSP Gurinderpal Singh am posted at present as DSP Sub Division, Attari, District Amritsar Rural and I wearing my uniform and my name plate is affixed on my uniform and I am a Gazetted Officer appointed by the Punjab Government, I have received information that you are in possession of Heroin. Therefore, your search needs to be conducted but you have the legal right that you can get your search conducted in the presence of a Magistrate or another Gazetted Officer, which can be arranged. Whereupon, suspect

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Ravitinder Singh @ Ravi said to the DSP that I have full faith in you and I can get my search conducted in your presence. Thereafter, I ASI got the consent memo of suspect Ravitinder Singh @ Ravi. Before conducting the personal search of suspect Ravitinder Singh @ Ravi, I ASI tried to join public witnesses in the search but every passerby and resident of the village expressed their helplessness and fear of enmity and no one joined the police party. Thereafter, under the instructions of DSP and in the presence of fellow officials, I ASI conducted the personal search of suspect Ravitinder Singh @ Ravi on which, from the right hand side pocket of the lower (pajama) worn by suspect Ravitinder Singh @ Ravi one heavy polythene bag of black colour was found. On opening the heavy polythene bag of black colour, on checking revealed one transparent polythene bag from which Heroin was recovered. That the recovered Heroin was weighed on the electronic scale along with the transparent polythene bag and black colour bag, which along with both polythene bags weighed 300 grams. That the 300 grams Heroin in the transparent polythene bag and black polythene bag was kept in separate plastic box and parcel was prepared on which I ASI affixed my seal H.S. and Sh. Gurinderpal Singh PPS DSP, Sub Division, Attari affixed his seal G.P.S. Sample seals were prepared separately. After use, I ASI handed over my seal H.S. to ASI Hardeep Singh 282/Asr.-R and DSP kept his sealed G.P.S. with him. Aforesaid parcel of plastic box with 300 grams Heroin and transparent polythene bag and black polythene bag with seal H.S. and G.P.S. along with sample seal were taken into police possession while separate recovery memo as evidence. Suspect Ravitinder Singh @ Ravi being in possession of 300 grams Heroin is accused of offence under Section 21 (c)-61-85 NDPS Act and I ASI getting computerized Ruqa prepared and printed, am sending Constable Karanjit Singh 1567/Asr.-R to Police Station Gharinda. The number of the case being informed after getting the same registered. Special reports be prepared and sent to the Ilaqa Magistrate, Control Room and Senior Officials. I ASI, along with DSP and fellow officials am present at the spot and involved in the investigation. Today in the area near gate at the turn of Village Ratan Kala at 05:25 PM, Sd/- Harjinder Singh ASI, CIA Staff, District Amritsar Rural, dated: 04.10.2023. Today at the Police Station: today after receiving the aforesaid information at the Police Station, aforesaid case under the aforesaid Section has been registered and the true copy of the FIR is being sent through aforesaid Constable to the ASI at the spot. Special Reports after issuance are being sent to the Ilaqa Magistrate and the Senior Officials through ASI Sarwan Singh No. 224/ASR.-R."

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3. Learned counsel for the petitioner submits that allegedly, the petitioner was apprehended with 300 grams of heroin. The petitioner has been falsely implicated in this case. He has undergone an actual custody of 01 year, 01 month and 27 days and is not involved in other criminal case.

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 01 year, 01 month and 27 days and it is not disputed that there is no other criminal case pending against him. He on instructions from Inspector-Amandeep Singh submits that charges were framed on 14.05.2024 and out of total 09 prosecution witnesses, only 01 witness has been examined till date. He further submits that in view of strict rigors of Section 37 of 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

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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:-

"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:-

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“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.

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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 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.

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(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 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."

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11. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, petitioner has undergone an actual custody of 01 year, 01 month and 27 days and there is no other case pending against him and his further incarceration 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”**.

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).

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- (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.

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

04.12.2024
Ramandeep Singh

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