

207

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40372-2023 (O&M)
Date of decision : 21.03.2024

BALWINDER SINGH ALIAS AMBPetitioner

Versus

STATE OF PUNJABRespondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ravi Mehra, Advocate for the petitioner.

Mr. J.S. Arora, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.403 dated 26th of October, 2022 registered for the offences punishable under Sections 21-C (21-C/61/85) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Goindwal Sahib, District Tarn Taran.

2. Petitioner has been booked in the aforesaid FIR on the ground that 272 grams of *heroin* was recovered from the dashboard of the car that he was riding. On 8th of November, 2023 the following order was passed :

“Status report by way of affidavit of Ravisher Singh, PPS, Deputy Superintendent of Police, Sub Division Khadur Sahib, Camp at Goindwal Sahib, District Tarn Taran has been filed on behalf of the respondent-State. The same is taken on record.

Counsel for the petitioner has produced copy of the notice under Section 50 of NDPS Act, consent memo, recovery memo and recovery memo of XUV car and has demonstrated that there is

a difference between signatures of the witnesses on the said memos. Even some memos have been signed in English, whereas other documents have been signed in Punjabi by the same person to submit that it is highly improbable that all these documents are expected to have come into being on the same time and the witnesses are signing differently.

State counsel prays for time to respond to the same by filing affidavit.

On his request, adjourned to 06.12.2023.”

3. In compliance thereto, affidavit of Ravisher Singh, PPS, DSP, Sub Division Khadur Sahib, Camp at Goindwal Sahib, District Tarn Taran, dated 1st of February, 2024 has been filed. The stand taken therein reads as under :

“4. That it is submitted that so far the facts of difference between signatures of the witnesses on the memos i.e. notice under Section 50 of the NDPS Act, Consent memo, Recovery Memo and recovery of XUV car is concerned, it is submitted that in order to verify the said fact, the deponent has called the concerned official witnesses namely ASI Balbir Chand No. 964/TT and HC Nirmal Singh 26/TT in his office and put query about the difference between signatures on the said memos and in this regard their respective statements have also been recorded and in their statements they stated that the notice under section 50 of NDPS Act, Consent memo, Recovery Memo and recovery of XUV were prepared by the investigating officer SI Jagtar Singh at the spot and same were signed by them in the presence of investigating officer at the spot on 26.10.2023.

5. That it is submitted that from the enquiry conducted so far, it is submitted that the signatures appended on the said memos in Punjabi and English language were signed by ASI Balbir Chand No. 964/TT and HC Nirmal Singh 26/TT themselves and they recognized their respective signatures.

6. That it is submitted that mere difference between signatures on the said memo in Punjabi and English language, it cannot be said

that it is highly improbable. There is no ambiguity or dent in prosecution case. Moreover, the offence which is committed by the petitioner is not against any individual person rather same is offence against society hence the petitioner is certainly not entitled for the concession of regular bail at this stage.”

4. Apart therefrom, counsel for the petitioner submits that the petitioner is behind bars for more than 1 year, 4 months and 24 days. Investigation stands concluded way back on 21st of April, 2023 and the charges were framed on 24th of July, 2023, yet till date only one out of 14 cited witnesses could be examined. The trial now is stated to be fixed for 28th of April, 2024.

5. Learned Counsel for the petitioner relies upon order passed by Apex Court in the case of **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. 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."

7. The above-said case was also a case under the NDPS Act, 1985 and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Supreme Court had observed that the concession of bail was granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

8. Supreme Court in 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**" was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as under: -

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.

The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."

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.
- (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 aforesaid terms.

Pending application(s), if any, shall stand disposed of."

11. State Counsel though does not dispute the factual assertions made by counsel for the petitioner w.r.t. the stage of the trial but submits that the petitioner is involved in two more cases under the NDPS Act.

12. Faced with the situation, counsel for the petitioner submits that both the cases involved less than commercial quantity and the petitioner has earned bail in both the cases.

13. I have heard counsel for the parties and have gone through records of the case.

14. Having heard rival contentions and after going through records of the case, without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioner and the fact that the investigation already stands concluded and Challan stands presented, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

15. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.

- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

16. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.
17. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.
18. Pending application, if any, shall also stand disposed off.

March 21, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No