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Date of Decision : 15-04-2024

1.

HARMINDER SINGH @ HONEY

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

2.

JASVIR SINGH @ JAGGA

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. S.S. Gill, Advocate for the petitioner(s).

Mr. Mohit Kapoor, Sr. DAG Punjab.

PANKAJ JAIN, J. (Oral)

1. Both the matters involve similar allegations, thus the same are being disposed off by a common order.

2. The abovesaid two petitions have been filed by the petitioner(s) seeking regular in FIR No.18 dated 21.02.2023 registered for the offences punishable under Sections 21 and 22 of the NDPS Act,

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1985 at Police Station Anaj Mandi, District Patiala.

3. As per the case of the prosecution, a secret information was received with respect to petitioners indulging in Narcotics and Psychotropic Substances. They were apprehended while travelling in the car and recovery was made from the dashboard of the car. 100 white coloured intoxicant tablets and 50 gms of heroin was recovered i.e. 64 gms admittedly anything more than 50 gms falls within the ambit of commercial quantity.

4. Counsel for the petitioner(s) submit that the petitioners were behind bars for more than 1 year 1 month and 20 days. Challan stands presented on 11.08.2023 and by now 1 out of 15 cited witnesses could be examined despite the fact that no suitable witnesses are official.

5. None of the petitioners have any prior history of indulging in the offences punishable under the NDPS Act.

6. Further reliance is being placed upon the observations made by 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.

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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 phensydril 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."

7. 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: -

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"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."

8. 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: -

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"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."

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

10. Keeping in view the incarceration suffered by the petitioner(s) and the fact that trial is not likely to conclude in the near future, the present petition is allowed. The petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate

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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.

11. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

12. Photocopy of this order be placed on the connected case.

15-04-2024
spn

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No