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

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Date of decision : 18.09.2024

Rajesh Gupta**..... Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Solomon Partap Singh, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 483 of BNNS for grant of regular bail to the petitioner in case bearing FIR No.27 dated 24.04.2022, registered for the offence punishable under Section 20 of the NDPS Act at Police Station Kheri Gandian, Patiala.
2. As per the case of prosecution, it is being claimed that the petitioner was found to be in conscious possession of 5 kg 200 gms of charas.
3. Contents of the FIR read as under:-

“At this time a ruqa received from SI Surinder Singh 1538/Ptl, P.S. Kheri Gandian with regard to registration of case against Rajesh Gupta son of Yamuna Gupta resident of Village Khem Matenia, P.S. Kuchhakot, District Gopal Ganj, Bihar under section 20/61/85 of NDPS Act received by hand from Sukhdev Singh 2982/Ptl received in the station and the contents of the same are: SHO, P.S. Kheri

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Gandian. Jai Hind. Today I SI alongwith SI Jaswinder Singh 2248, SI Sukhdev Singh 2982, SI Joginder Singh 364, C. Kulwant Singh 1246 and PHG Karamjit Singh 30124 were there in private vehicle bearing No. HR41G4509 alongwith laptop, printer on special patrolling on Rajpura Patiala Road near Village Bhagoli Gujran were present and were checking the vehicles coming towards Rajpura Side by putting barricades and about 6:30 AM during checking, then a bus which was coming from Rajpura Side was stopped and police party checked it and then from the bus one cleaned shave person who is having a black color pithu bag on his back, suddenly came out from the bus and started running then 1 SI on the pretext of suspicion called him and with the help of other police officials caught hold him and on asking his name on which he told his name as Rajesh Gupta son of Yamuna Gupta resident of Village Khem Mateian, P.S. Kuchha Kot, District Gopal Ganj, Bihar. As per the description he was aged about 38 years height 5.8 inches color wheatish, body thin, muslim fashion, mark of injury on the palm of right hand, healthy. I have told about my identity to the nabbed person that I SI Sukhwinder Singh is posted at P.S. Kheri Gandian and I have suspicion that you have some intoxicant substance in your pithu bag and as such I want to conduct your as well as search of your pithu bag. But you have a legal right that you can conduct your search from a Gazetted Officer or Magistrate and the same could be called at the spot. But then Rajesh Gupta after thinking for some time said that he does not want to get himself search in front of any Gazetted Officer or Magistrate and he has faith on



me only and told that I could search him. Then the statement of Rajesh Gupta got wrote and notice under section 50 of the NDPS has been prepared, on which Sub Inspector Jaswinder Singh 2248 and Sub Inspector Joginder Singh 364 have signed their as witness that the statement of Rakesh Gupta is correct. Then I ASI got search Rajesh Gupta and checked the Pithu Bag and from which one plastic polythene was recovered and after opening its mouth, from which Sulpha was recovered, the said recovered Sulpha was weighed on weighing machine and the same was found to be 5 Kilo 200 grams. The recovered 5 Kilo 200 grams Sulpha was again kept in the said Pithu Bag and a parcel was prepared and the said parcel was sealed as SS by myself SI and the sample of the contraband was separately prepared and the same was sent through SI Jaswinder Singh No. 2248. Sealed sample with the stamp SS and sample stamp SS was kept into police custody through separate memo and placed the signatures of the witnesses on the said memo and as such from the possession of Rajesh Gupta 5 Kilo 200 Gram Sulpha was recovered and as such. offence under section 20/61/85 of the NDPS Act was found and such ruqa be prepared and case be registered against aforesaid Rajesh Gupta and the same is send through SI Sukhdev Singh 2982 to the police station and after registration of the case, number of the case be informed. Myself SI alongwith accompanied officials were busy in investigation on the spot. In the area of T Point Village Badoli Gujran at 8:30 AM. SD/ Surinder Singh.

2 That the Petitioner has been falsely implicated in the above-mentioned case whereas he is quite



innocent and has nothing to do with the present case. The brief facts of the case are that on dated 24.04.2022 the official of police party were present at T point village Badoli Gujran Rajpura Patiala road, at about 6:00 AM one bus came from the side of Rajpura and one clean shaven person alighted from the bus and tried to ran away and he was apprehended on suspicion and recovered of 5 kg 200 gms Sulpha from him.”

4. Counsel for the petitioner submits that recovery was not effected in presence of any Gazetted Officer or the Magistrate and it is a case of chance recovery. Petitioner is behind bars since 24.04.2022 i.e. more than 02 years, 04 months and 21 days. Trial is proceeding at snail’s pace as only 02 out of 09 cited witnesses could be examined in more than 02 years despite the fact that most of the witnesses are official witnesses. Counsel for the petitioner further submits that petitioner has been booked only for the reason that he was involved in another FIR i.e. FIR No.77 dated 21.03.2018, wherein he was found to be in conscious possession of 50 kg of charas.

5. State counsel opposes the bail plea submitting that the petitioner is a habitual offender. However, it is not disputed that the trial is not likely to conclude in the near future.

6. 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, 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



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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.”

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 **Special Leave to Appeal (Crl.) No.5530-2022** dated 22.08.2022 titled as "***Mohammad Salman Hanif Shaikh Vs. The State of Gujarat***", 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. The Hon'ble Supreme Court in ***Criminal Appeal No.245/2020 dated 07.02.2020 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

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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. The Supreme Court in ***Criminal Appeal No.1169 of 2022*** dated 05.08.2022 ***titled as "Gopal Krishna Patra @ Gopalrusma Vs. Union of India,"*** observed 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

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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. The Supreme Court in Special Leave to Appeal (Crl.) No.5769/2022 dated 01.08.2022 titled as "**Nitish Adhikary @ Bapan Vs. The State of West Bengal**" 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

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

12. Without commenting on the merits of the case, considering the period already spent by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his 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 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.

13. 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.

- 14. Ordered accordingly.
- 15. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

18.09.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No