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

Sr. No.226**CRM-M-44524-2024 (O&M)****Date of decision : 28.11.2024****Amit**

..... Petitioner

VERSUS**State of Haryana**

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Anshumaan Dalal, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 BNSS, 2023 has been invoked for grant of regular bail to the petitioner in case FIR No.339 dated 21.12.2023 under Sections 22 & 29 of NDPS Act, 1985, registered at Police Station Civil Lines Rohtak, District Rohtak, Haryana.

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

“To the SHO, Police Station Civil Line, Rohtak, Jai Hind, Today me ASI along with fellow employee EHC Rakesh 1444, Constable Harjeet No. 2275, Constable Manoj No. 2255 along with government vehicle number HR 46GV 1665, driver ESI Rajesh No. 506 with laptop, am present at Prem Nagar Chowk, Rohtak in search of drugs then a special informer met me and informed that Amit son of Ranbir resident of Uttam Vihar, Rohtak who deals in selling WINCEREX narcotic drugs and is still standing at Hafed Chowk with his motorcycle no HR 12T 6256 brand Platina in search of opportunity to sell drugs and if an immediate raid is conducted then he can be caught along with the drugs. The information being true, reliable and trustworthy, I ASI informed my fellow employees about the information and a notice under section 42 of NDPS Act is being prepared and sent to Police Station Civil Line, Rohtak through SI Harjeet 2275 for getting report registered in Daily Diary Register. After the report is registered it should be informed with the copy of report from the daily diary register and the

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officers and SHO be informed. After relieving the special informer, I ASI along with co-employees reached Haffed Chowk, Rohtak in a government vehicle. Where a person was seen sitting on a motor cycle no. HR 12T 6256 holding a white polythene in his left hand, as per information given by an informer. He was overpowered with the help of fellow employees and when asked about his name and address, he told his name as Amit son of Ranbir, resident of village Kilo, Rohtak, presently residing at Street no. 11, Uttam Vihar, Rohtak. He was given a notice under section 50 of NDPS ACT and told that I am the investigator ASI Sandeep 1091 ANC Staff, Rohtak; I inform you, Amit son of Ranbir, resident of village Kilo, Rohtak, presently residing at Street no. 11, Uttam Vihar, Rohtak, that I am sure that the white polythene held in your hand contains the narcotic drug WINCEREX, so it is necessary to search you and the white polythene held in your hand. That you have the legal right to get your and your motor cycle no. HR 12 T 6256 searched by a magistrate or a gazetted officer who can be called on the spot or you can be taken to him. On the notice under section 50 of NDPS Act the above mentioned suspect Amit son of Ranbir and the witnesses signed respectively. In reply to the notice the suspect Amit son of Ranbir has given in writing that I, Amit son of Ranbir, a resident of village Kilo Pana Chaudharan, currently residing in street no. 11, Uttam Vihar, Rohtak and have studied up to 10th class. I want to get myself and the polythene in my hand and my motor cycle no. HR 12 T 6256 brand Platina searched in front of a gazetted officer, he should be called on the spot. On the reply to the notice under section 50 of NDPS Act the suspect Amit son of Ranbir above and the witnesses signed for themselves. Then I ASI through my mobile no. 7988088128 contacted gazetted officer Deputy Superintendent of Police Shri Virender Singh on his mobile number 7082999109 and informed him about the situation and requested him to come to the spot. At the same time, constable Harjeet 2275 got the report registered in daily diary register and came to the spot with copy of report number 20 dt. 21.12.2023 and handed it over to me ASI. After some time, gazetted officer Deputy Superintendent of Police Shri Virender Singh arrived at the scene. He informed everyone about his name and designation and the search of me ASI was carried out by the gazetted officer Deputy Superintendent of Police Shri Virender Singh. During the search of the ASI, no suspicious object was found which could be taken into possession as per the body search. The body search with no recovery report was prepared. On which I and the witnesses signed. The gazetted officer verbally instructed me ASI to search the suspect Amit son of Ranbir and the motorcycle, at this time the moving public was informed about the circumstances and asked to become witness, who left the

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scene citing their legitimate compulsion as the case was of NDPS. On which, during search by me ASI under the direction of Gazetted Officer, the motor cycle no. HR 12T 6256 was searched and no suspicious item was recovered. During search of suspect Amit son of Ranbir resident of village Kilo Rohtak, currently residing at street no. 11, Uttam Vihar, Rohtak as per procedure, on opening and checking the white polythene held in the hand of suspect Amit son of Ranbir, total 13 bottles. of WINCEREX were found inside the white polythene which on checking all the bottles was found to be BATCH NO. WCCS 3021. In this regard, when me ASI asked for license and permit from Amit son of Ranbir then he could not produce any license or permit, on which me ASI called from my mobile no. 7988088128 on the mobile no. 7404013222 of Shri Mandeep Mann, Drug Control Officer, Rohtak and sent the photo of the recovered bottles through WhatsApp, who told that the above mentioned medicines are banned and come under the purview of NDPS, on which I will submit my report later as I am out on official work, on which the ASI prepared a cloth parcel and put a total of 13 prohibited bottles in a polythene of black color and prepared a white cloth parcel and a separate parcel of white polythene was prepared and both the parcels were stamped by putting my seal SK/5 on each and the sample seal was prepared with SK/1 and later handed over to EHC Rakesh 1444 and both the parcels were taken in possession of the police as evidence through recovery memo; on the recovery memo the above mentioned accused Amit son of Ranbir signed and the witnesses also signed, that the gazetted officer also affixed his seal of VS on each of the parcels of white polythene and bottles and sample seal and the memo and parcels were verified and the seal was kept with himself, that the gazetted officer left the spot. The suspect Amit son of Ranbir above has committed the offence under section 22 of NDPS Act by keeping in his possession a total of 13 prohibited bottles of make WINCEREX - 100 ML BATCH NO. WCCS 3021. On which a written complaint for lodging case is sent through constable Harjeet 2275 to police station. After the registration of case it's number be informed, a special report of the case should be sent to the higher officers. Further investigator should be sent to the spot as per the rules, me ASI along with staff are busy at the spot for investigation. Today:- Hafed Chowk, Rohtak ASI SANDEEP 1091 / RTK ANC Staff Rohtak Date 21.12.23 AT 7.20 PM Today in Police Station- On receipt of the complaint in the above police station, Case No. 339 dated 21.12.2023 under Section 22 of NDPS Act PS C/Line Rtk. by logging into CCTNS using SHO sahab's ID in the presence of L/ASI Renu 1726/Rohtak, was registered in computer and copies of FIR were prepared. Special report of the case is being sent through Email to the Area Magistrate, the SP and Area Officer. The

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copy of the police file along with the original complaint was handed over to coming constable Harjeet 2275 and sent for I/O at the spot. For further investigation of the case, the second investigator ASI Vikas 80/Rohtak ANC Staff Rohtak was informed over telephone about reaching the spot. The SHO was informed about the situation."

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and he has not been named in the FIR. He further submits that no specific role has been attributed to the petitioner. He is a man of clean antecedents. The petitioner has undergone an actual custody of 11 months and 05 days and there is no other criminal case registered against him.

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 11 months and 05 days and it is not disputed that there is no other criminal case pending against him. He on instructions submits that challan has been presented on 16.05.2024 and charges have not been framed. 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 :-

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“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. 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.

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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:-

"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

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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.

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.

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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

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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."

11. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, challan has been presented on 16.05.2024 and the charges have not yet been framed. The investigation is complete. The petitioner has undergone an actual custody of 11 months and 05 days and there is no other case registered 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.

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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).
- (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

28.11.2024
Ramandeep Singh