

**214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M No. 56608 of 2022 (O&M)
Date of decision : 01.02.2024**

Shiv Om

..... Petitioner

versus

State of Punjab

..... Respondent

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Bharat Bhushan Choudhary, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

*********PANKAJ JAIN, J. (ORAL)**

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.169 dated 21.10.2021 registered under Sections 18, 25 of the NDPS Act at Police Station Doraha, District Ludhiana (mentioned in FIR District Khanna).

2 Custody certificate by way of affidavit of Shivraj Singh, Superintendent of Central Jail, Ludhiana on behalf of State has been filed. The same is taken on record.

3 As per the case of the prosecution, it has been alleged as under :-

“On 21.10.2021 when SHO along with SI Barjinder Singh No. 69/ Khanna, PHG Som Nath 17877 were going in the government Scorpio car bearing number PB65AW-1511 which was being driven by the driver ASI Harbaksh Singh 740/Khanna and were present with regard to checking of the doubtful elements at Sardar Beant Singh Chowk Doraha. At approximately 4:20 p.m. SI got a phone call on his mobile number 9780001489 from SI Kuljeet Singh 363/PAP from his mobile number

9781160099 and informed that he along with ASI Sukhdev Singh 02/Khanna and SI Mahendra Chand 327 Khanna were on patrolling for the search of doubtful elements at service road opposite PUNSUP godown Doraha and were checking the vehicles of the doubtful elements then from the service road from the side of Khanna a Baleno car bearing number PB 10 FH 0555 of white colour came in which two young boys were sitting. A sikh boy was driving the car whereas a clean shaven boy was sitting in the seat next to the driver. In order to conduct checking they both were stopped as it seems that the both are having intoxicating substance and you should accordingly come at the spot. Upon which SI along with the SI Barjinder Singh 69/Khanna, PHG Somnath 17877 sat in the government Scorpio car bearing number PB-65-AW-1511 which was being driven by the driver ASI Harbaksh Singh 740/Khanna and at approximately 4:35 pm reached opposite PUNSUP godown service road Doraha. There SI Kuljeet Singh 363/PAP presented both the young boys for their checking. Upon which SI asked both the boys to come out of the car and enquired from the Sikh boy who was driving the car about his name and address. Upon asking he told his name as Harmeet Singh alias Sabbi son of Gurmeet Singh resident of H. No. 1348/434, H/1, Street No. 7, Haibowal Khurd Ludhiana and the clean shaven boy sitting on seat next to him told his name as Ravinder Singh alias Raju son of late Major Singh resident of Ayali Khurd, PS PAU, Ludhiana. Thereafter SI told them about himself and gave his introduction that he is SI Nachattar Singh 489/Khanna. He is posted at police station Doraha as SHO. He has wore the uniform of his rank and his name plate is also there. He has doubt that either you or the car which you were driving contain some intoxicating substance. He intend to conduct their such as well as the search of their car. But they have a legal right that they can get their search as well as the search of their car apart from him from some Magistrate or Gazetted officer, who can be called here at the spot. There after both the accused persons in a common voice responded that they have faith upon him and he only can conduct their search as well as the search of their car. Upon which SI prepared the separate consent memo of both the accused persons. Both the accused persons executed their respective signatures on their respective consent memos and the signatures of the witnesses were also taken. Thereafter, SI conducted the search of accused Harmeet Singh alias Sabby and Ravinder Singh alias Raju, however upon search no objectionable substance was found from them. Thereafter, Si conducted the search of the car of the accused and from the dashboard of the car one transparent heavy polythene bag containing opium was recovered. Upon

weighing the same was found to be 500 grams. Thereafter the said transparent polythene was kept in a plastic bag and a separate parcel was prepared, which was duly stamped with his stamp bearing words "NS". The sample stamp was separately prepared. After the use the stamp was handed over to SI Barjinder Singh 69/Khanna. That a query was asked from the accused persons and both in a common voice told that the opium which has been recovered from them, the same was purchased from the driver of the truck bearing number PB-23-M-3445 namely Shivom s/o Prabh Dayal resident of Nabedia Fatehganj District Bareilly (UP). In-fact they further told that the said truck is coming behind us, from the side of Khanna towards Ludhiana only, and from him opium in heavy quantity can be recovered. Thereafter the parcel of the opium recovered from the accused persons weighing 500 grams duly stamped with the stamp NS as well as the sample stamp and the car Baleno bearing number PB-10- FH-0555 was taken into police custody vide separate recovery memo. Upon the recovery memo the signature of the witnesses were taken. During this while as informed by accused Harmeet Singh and Ravinder Singh one 12 tires truck bearing no. PB- 23-M-34 45 came from the Khanna side on the service road. Thereafter, SI along with the help of the officials stopped the said truck. Thereafter, the driver of the truck was asked to get down from the truck and his name and address was enquired from. Upon enquiring he told his name as Shivom son of Prabh Dayal r/o Nabedia Fatehganj District Bareilly (U.P). Thereafter SI while informing about his identity told that that he is SI Nachattar Singh 489/Khanna, he is posted at police station Doraha as SHO. He is in the uniform of his rank as well as his name plate is also there. He has doubt that either you or the truck which you were driving contain some intoxicating substance and therefore he intend to conduct his search as well as the search of your truck, but he has a legal right to get his search conducted as well as the search of their truck conducted, apart from him, from some Magistrate or Gazetted officer, who can be call here at the spot. Thereafter accused Shivom told that he has faith upon him and he only can conduct his search as well as the truck. Thereafter, SI prepared the consent memo of the accused, upon which the accused put his signatures on the consent memo and thereafter the signatures of the witnesses were also taken. Thereafter, SI conducted the search of accused Shivom, but nothing intoxicant was found from him. Thereafter, SI conducted the search of the truck and from the cabin of the truck on the upper level one transparent heavy polythene bag containing opium was recovered. Upon weighing the opium the same was found to be 2 Kg and 600 grams. Thereafter, the transparent bag was put in a plastic

box and the separate parcel was prepared. Thereafter, SI received his stamp from SI Barjinder Singh 69/Khanna and the said parcel was duly stamped with bearing words "NS" the sample stamp was separately prepared. After the use the same was handed over to SI Barjinder Singh 69/Khanna."

4 Learned counsel for the petitioner submits that dehors the merits of the case, the petitioner is behind bars for more than 2 years, 3 months & 9 days and the recovery alleged to have been effected from the truck he was driving is 2 kg & 600 grams opium which is just above the commercial quantity of 2 kg & 500 grams. The petitioner has clean antecedents and the material witnesses already stand examined in the trial. He further 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."

5 Earlier to ***Rabi Prakash's case supra*** also Apex Court has consistently held that the prolonged incarceration has to be considered dehors 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."

6 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.

7 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."

8 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."

9 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."

10 Learned State counsel is not in a position to dispute the
aforementioned factual assertions based on record.

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 and considering
the incarceration suffered 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.

01.02.2024
Pooja sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	No