



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216

CRM-M-60945-2023

Date of Decision: 28.08.2024

Bhola Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. L.S. Sekhon, Advocate for the petitioner.

Mr. Vinay Kumar, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.007 dated 19.01.2022, under Sections 15 and 29 of NDPS Act, registered at Police Station Sadar Ahmedgarh, District Malerkotla.

2. The brief facts of the case are that the FIR was registered on the basis of secret information that Gurinder Singh (co-accused) and his father Bhola Singh (petitioner) were indulging in the smuggling of poppy husk and were transporting poppy husk in their Swift car no. PB-13BF-1824 while procuring the same from outside the State, and if a check post was laid out then they could be apprehended with heavy quantity of poppy husk. Finding information to be credible, ruqa was sent for registration of the FIR. From the perusal of the record it transpires that 75 kgs of poppy husk was recovered from the petitioner and co-accused Gurinder Singh and they were arrested at the spot.



3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case and there is non-compliance of mandatory provisions of Sections 42 and 50 of the NDPS Act. He has undergone an actual custody of 02 years, 02 months and 01 day and there are four other case registered against him. The co-accused-Gurinder Singh has already been granted bail by this Court vide order dated 20.08.2024 passed in **CRM-M-9692-2022**.

4. Learned counsel for the petitioner further submits that charges were framed way back on 29.09.2022 and out of total 17 prosecution witnesses, one has been examined and three have given up. The conclusion of the trial will take a considerable period of time. Further reliance is being placed 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 :-

“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. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He states that the



petitioner was actively involved in this commission of the offence and commercial quantity of contraband has been recovered from the accused because of which Section 37 of the Act would be a bar to the grant of bail. He has filed custody certificate dated 27.08.2024 in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone actual custody of 02 years, 02 months and 01 day and there are four other cases registered against him and out of which in one case he has been granted bail by learned JMIC Malerkotal. He on instructions, submits that charges were framed on 29.09.2022 and out of total 17 prosecution witnesses, only one has been examined and three have given up. The next date of hearing before the learned trial Court is 29.11.2024. However, in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

6. Heard the rival submissions made by learned counsel for the parties.

7. Earlier to ***Rabi Prakash's case (supra)*** also Hon'ble 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."

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 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

09. In order dated 05.08.2022 passed by the Hon'ble 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**" Hon'ble 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. As far as the pendency of other cases and involvement of the petitioner in other cases is concerned, reliance can be placed upon the order of this Court rendered in CRM-M-25914-2022 titled as ***"Baljinder Singh alias Rock vs. State of Punjab"*** decided on 02.03.2023, wherein, while referring Article 21 of the Constitution of India, this Court has held that no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality, strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would land the petitioner in a situation of denial of the concession of bail.

12. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges were framed way-back on 29.09.2022 and out of total 17 prosecution witnesses, only one have been examined and three have given up and next date before the trial Court is 29.11.2024. The petitioner has undergone actual custody of 02 years, 02 months and 01 day and he is not involved in any other case.

13. Consequently, the petition is allowed and order dated



19.03.2024 is made absolute. 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.

28.08.2024
Kapil

(KIRTI SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No