

**CRM-M-61455-2023****300****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-61455-2023****Decided on: 18.12.2024**

Rajender alias Mopal

... Petitioner(s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGHPresent : Mr. Vikas Bishnoi, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG Haryana

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 of Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.255 dated 19.12.2012, under Sections 15 and 27-A of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Bhana, District Fatehabad.

2. The contents of the above-mentioned FIR are reproduced herein below:-

"To. The Station House Officer, Police Station Sadar Tohana. Jai Hind. Today I. ASI along with EASI Phool Singh 22, HC Rohtash 50, EASI Dhanraj No.177 were in Government Vehicle bearing registration No.HR-22C-7505 which was being driven by EASI Om Parkash No.503 and have done barricading on village Jamalpur Shekhan to Village Chandarh Kalan Road going towards Jamalpur Shekhan, then a vehicle of white color Mahendera Max memo Mini Van bearing Registration No.HR-39B-9038 was seen coming from

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Chandhar Kalan side and I, ASI signaled the same to stop, then the driver of car at the first instance reduced the speed and after that he increase the speed of the car and on this 1, ASI chased the car and with the help of fellow colleagues got stopped the car at some distance, then after stopping the vehicle, the driver of vehicle and two other young boys who were sitting in the vehicle, left the vehicle and ran towards the fields and they succeeded in running. All the three boys could be recognized if produced before us and that on checking the vehicle then two plastic bags of white color were found in the middle of both the seats inside the vehicle and on having suspicion of intoxicant substance, I informed Deputy Superintendent of Police, Tohana through phone and requested him to reach on the spot. That after waiting Sh. Om Parkash, Deputy Superintendent of Police, Tohana in his Govt. Vehicle along with staff reached on the spot. That on the instructions of Deputy Superintendent of Police both the bags that were kept in the vehicle were opened and checked, then poppy husk was recovered. That after arranging the electronic scale, samples of 100-100 gms were taken out and Palanda was prepared and remaining poppy husk was weighed, then the weight of bag No.1 comes out as 34 Kg 800 gm and from Bag No.2 two samples of 100 gm each were taken out and palandas have been prepared and then the recovered poppy husk was weighed, then weight of bag comes out as 34 Kg 800 gm. That total weight of both the bags having poppy husk comes out as 69 Kg 600 gms. That palandas of samples of poppy husk and palanda of recovery bags were stamped with stamp RK and OP and sample seal was prepared. Seal after use was handed over to EASI Krishan and the vehicle was searched minutely, then from the tool of the vehicle one R.C. bearing No.HR-39B-9038 on which the name of owner was written as Mukesh Kumar S/o Ami Lal VPO Samsukh, District Hisar. That recovered palandas of sample of poppy husk and both the bags containing poppy husk along with vehicle bearing registration No.HR-39B-9038 and R.C. were taken into police custody through property seizure memo. Memo was signed by

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witnesses and memo was attested by DSP. Because the driver of the car and two other young boys whose names are not known have committed an offence under Section 15/61/85 and 27A of NDPS Act by keeping in possession 70 Kg poppy husk without any permit and license in their vehicle. Therefore, information is written and is being sent through EASI Dhanraj 177 to Police Station and registered number of case be informed after registration of case. 1. ASI is present on the spot with fellow colleagues. At:- Road from Village Jamalpur to Chandarh Kalan in the area of Jamalpur Shekhan. Sd/- Omparkash, P.S. Sadar Tohana dated 19.12.2012 at 7.15 p.m.”

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case. The alleged recovery of 70 Kgs of poppy husk was made from the vehicle which was occupied by three persons including the petitioner. There is an alleged recovery of 70 Kg poppy husk contained in two bags in vehicle. He further submits that petitioner has undergone an actual custody of 01 year, 04 months and 21 days. There are 18 other cases pending against him under, however, he is on bail in 08 cases, has undergone his sentence in 07 cases and has been acquitted in 02 cases. The conclusion of the trial will take a considerable period of time.

4. *Per contra* learned State counsel submits that the petitioner was actively involved in the commission of the offence and Section 37 of the NDPS Act would be a bar to the grant of bail. He has filed custody certificate in Court today and the same is taken on record. As per the custody certificate, the petitioner has undergone actual custody of 01 year, 04 months and 21 days. He on instructions submits that charges were framed on 07.10.2023 and out of total of 19 prosecution witnesses, none has been examined. There are 18 other cases pending against the petitioner, however, he is on bail in 08 cases, has undergone his



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sentence in 07 cases and has been acquitted in 02 cases. However, in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

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

6. Earlier to ***Rabi Prakash vs. The State of Odisha passed in Special Leave to Appeal (Crl.) No(s). 4169 of 2023 decided on 13.07.2023*** 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."

7. 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,



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'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



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8. 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."

9. In order dated 01.08.2022 passed by the Supreme Court in Special



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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 aforestated terms.

Pending application(s), if any, shall stand disposed of."

10. As regards the submission of learned State counsel that petitioner is involved in eighteen more criminal cases, it has been held by the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382** that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be



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rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced herein-below:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

11. 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 07.10.2023 and out of total of 19 prosecution witnesses, none has been examined till date. The conclusion of trial will take a considerable period and further detention of the petitioner will not serve any useful 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.

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



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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.

16. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

18.12.2024

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No