



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

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**CRM-M-54054-2024(O&M)
Decided on : 28.01.2025**

HARPAL SINGH

... Petitioner(s)

Versus

STATE OF PUNJAB

... Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mr. Chetan Sehgal, Advocate for the
petitioner(s).

Mr. R.S.Thind, DAG Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 BNSS has been invoked for grant of regular bail to the petitioner in case FIR No.11 dated 17.05.2023 under Section 21, 25, 27-A and 29 of NDPS Act, 1985 (Section 21-C of NDPS Act and Sections 25, 27 of Arms Act and Sections 420, 467, 468 and 471 of IPC added later on), registered at Police Station State Special Operation Cell, Amritsar, District Intelligence Wing (CID).

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

“Head Clerk/Munshi, Police Station State Special Operation Cell Amritsar: Jai Hind, Today myself inspector/SHO along with fellow employees SI Rajwinder Singh 756/INT, ASI Daljit Kumar 2969/INT, ASI Narinder Singh 2553/PAP, ASI Sarbdeep Singh 1676/JAL, HC Jasbir Singh 5/242, HC Harpal Singh 5/754, S/ CT Gurwinder Singh 7/381, HC Satnam Singh 9/242, on official vehicles were present in the area of Ranjit Avenue Amritsar, when the secret informer came and informed that Robin Singh son of Sukhdev Singh resident of Plasore District Tarn Taran now resident of Loharka Road Amritsar along with his accomplice Harpal Singh son of Sukhwinder Singh resident of Sardulgarh Mansa, are active in heroin smuggling business on a large scale and have made a lot of property with the money earned from heroin smuggling. Today both the above said accused persons are present in the area of Ranjit Avenue Amritsar in their vehicle Fortuner bearing number PBO2-EL-1905 in connection with a big deal of heroin. If the said area is blockaded in a planned manner without any delay, then the above said accused persons might be arrested along with the Drug Money (earned from the selling of heroin). The statement is true and reliable by virtue of which, offences under section 21,25,27-A,29 NDPS ACT are found to have been committed, therefore Ruga is hereby sent to the police station by hand through ASI Dilbagh Singh No. 9/650 for registration of



FIR. After registration of FIR, its number be got informed. Special reports should be prepared and sent to the service of the District Magistrate Sahib and the higher officers, the control room should be informed through telephone, wireless. Area: Area Ranjit Avenue, Amritsar AT: 04:55PM, Correct/- INSP Sukhbir Singh 1962/PAP Station: State Special Operations Cell, Amritsar. Date: 17.05.2023”

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is alleged that 600 grams of heroin was recovered from the petitioner. He further submits that four co-accused persons have already been granted regular bail by this Hon’ble Court (Anneuxres P-7 to P-10). He further submits that the petitioner has undergone an actual custody of 01 year, 08 months and 01 day and there is no other case registered against him.

4. Per contra, learned State counsel opposes the submissions made by the learned counsel for the petitioner on the ground that the alleged contraband recovered from the conscious possession of the petitioner, falls within the ambit of commercial quantity, as such, in view of the embargo created by Section 37 of the NDPS Act, the petitioner is not entitled to the concession of regular bail. 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 01 year , 08 months and 01 day and there is no other case registered against him. He on instructions from the concerned investigating officer submits that charges were framed on 06.01.2024 and out of a total of 45 prosecution witnesses, only four have been examined till date.

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 :-

“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.

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.

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.

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 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. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 26.05.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court and trial of the case has not made much progress as out of 45 prosecution witnesses, only four have been examined so far. The four co-accused have been granted regular bail by



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this Court (Annexures P-7 to P-10). Therefore, the Trial in the present case will not conclude anytime soon. Hence, the further incarceration of the petitioner is not required as a prima facie satisfaction under Section 37 NDPS can be recorded in the aforementioned factual scenario. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violate of his rights under 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 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.



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- (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 her 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 application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

28.01.2025

Kavita

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