

2023 SCC OnLine P&H 660

In the High Court of Punjab and Haryana at Chandigarh
(BEFORE PANKAJ JAIN, J.)

Beant Singh ... Petitioner;

Versus

State of Punjab ... Respondent.

CRM-M-28618-2023

Decided on June 19, 2023

Advocates who appeared in this case:

Mr. Sarvesh Kumar Gupta, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, DAG Punjab.

The Judgment of the Court was delivered by

PANKAJ JAIN, J. (Oral):— Present petition has been filed under Section 439 Cr. P.C. for grant of regular bail to the petitioner in case bearing FIR No. 106, dated 14.4.2021, registered under Section 22(C) of NDPS Act, registered at Police Station Patran, District Patiala.

2. Learned counsel for the petitioner, inter alia, relies upon the order passed by a Coordinate Bench of this Court in CRM-M-20089-2023 dated 28.4.2023, granting bail to the co-accused, observing as under:

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"This 3rd petition under Section 439 Cr. P.C. is for the grant of regular bail in case bearing FIR No. 106 dated 14.04.2021 (Annexure P-1) registered under Section 22(C) of the NDPS Act, 1985 at Police Station Patran, District Patiala.

2. The brief facts of the case are that while the police party was on patrolling duty, a white colour Alto car bearing No. PB-28E-0322 was stopped. On suspicion, the driver disclosed his name as Andeep Singh son of Satpal Singh, the person sitting on the conductor seat as Beant Singh and the person sitting on the back seat of the car as Karamjit Singh (petitioner) son of Hardeep Singh. A search of the car revealed a black colour bag which was found to contain 70 intoxicant bottles of Wunicrex, Chlorpheniramine Maleate and Codeine Phosphate Syrup of 100 ML each and 100 strips of tablets having 10 tablets in each strip of Carisoma Carisoprodol tablets. Thereafter, the FIR came to be registered.

3. The learned counsel for the petitioner contends that there is violation of the mandatory provisions of search and seizure. No independent public witness was joined by the police party at the time when the contraband was allegedly recovered. So far as the

petitioner was concerned, he was sitting on the back seat of the car as a passenger and was not aware that contraband was being carried in the vehicle. As the petitioner was in custody since 14.04.2021, he was a first-time offender and none of the 09 prosecution witnesses had been examined so far, the petitioner was entitled to the grant of bail in view of the judgment of the Hon'ble Supreme Court in case of Nitish Adhikary @ Bapan v. The State of West Bengal, SLP (Crl.) Nos. 5769/2022 arising out of judgment and order dated 04.05.2022 in CRM(NDPS) No. 442/2022, decided on 01.08.2022 and followed by this Court in the case of Balraj Singh v. State of Punjab, CRM-M-57386-2022, decided on 14.12.2022.

4. On the other hand, the learned State counsel contends that commercial quantity of contraband was recovered from the petitioner. Therefore, in view of the conditions contained in Section 37 of the NDPS Act, the petitioner was not entitled to the grant of bail. He, however, concedes the fact that the petitioner is in custody since 14.04.2021, is a first-time offender and none of the 09 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for parties.

6. The Hon'ble Supreme Court in the case of Nitish Adhikary @ Bapan v. The State of West Bengal SLP (Crl.) Nos. 5769/2022 Decided on 01.08.2022 held 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 2 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."

This Court in the case of Balraj Singh v. State of Punjab, CRM-M-57386-2022, decided on 14.12.2022 has followed the dictum laid down by the Hon'ble Supreme Court and granted bail to the petitioner therein after he had undergone total custody of 01 year and 06 months.

7. In the present case, admittedly, the petitioner is a first-time offender. He is stated to be in custody since 14.04.2021 and none of the 09 prosecution witnesses have been examined so far. As such, the Trial of the present case is not likely to be concluded anytime soon. In such a situation, the rigors of Section 37 of the NDPS Act can be relaxed to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to a speedy trial and the petitioner can be granted the concession of bail.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Karamjit Singh son of Hardeep Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

10. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs. 1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

11. The petition stands disposed of."

3. Learned State counsel does not dispute the fact that the role of the petitioner is similar to the co-accused who have been admitted to regular bail vide orders passed in CRM-M-20089-2023 and CRM-M-26500-2023.

4. In view of the above and by granting parity, present petition is allowed. Without commenting anything on the merits of the case, the petitioner is ordered to be released on regular bail, keeping in view the incarceration of more than two years suffered by the petitioner, on his furnishing bail/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate, concerned.

5. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

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