

HIGH COURT OF PUNJAB AND HARYANA**CORAM: JUSTICE JASJIT SINGH BEDI****Date of Decision: 10 January 2024**

CRM-M-59305-2023

Nirmal Kaur ...Petitioner**Versus****State of Punjab ...Respondent****Legislation:**

Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985

Section 439 of the Criminal Procedure Code (Cr.PC)

Subject: Petition under Section 439 Cr.PC for the grant of regular bail in a case involving alleged possession and sale of intoxicant substances under the NDPS Act, 1985.

Headnotes:

Bail Petition for NDPS Act Offense - Nirmal Kaur's petition for regular bail in FIR No.177 dated 07.07.2021 under Sections 21 and 29 of the NDPS Act, 1985, registered at Police Station Division No.6, Ludhiana - Allegations of selling intoxicant powder and recovery of Alprazolam tablets and intoxicant powder from petitioner and her son [Paras 1-2].

Contention of False Implication - Petitioner's counsel argues false implication, non-compliance with mandatory provisions of Sections 42 and 50 of NDPS Act, absence of independent witnesses during search and seizure, petitioner being a first-time offender and in custody since 07.07.2021, delay in trial with 13 out of 17 witnesses examined - Cited judgments of the Supreme Court in *Nitish Adhikary @ Bapan Versus The State of West Bengal* and *Hasanujjaman & others Versus The State of West Bengal* [Para 3].

State's Opposition to Bail - State counsel opposes bail citing commercial quantity of contraband, but concedes petitioner's status as a first-time offender and duration of custody [Para 4].

Supreme Court Precedents on Bail - Reference to Supreme Court judgments in Nitish Adhikary @ Bapan Vs. The State of West Bengal and Hasanujjaman & others Vs. The State of West Bengal emphasizing bail in cases with long custody and slow trial progress [Paras 6-7].

Grant of Bail Considering Circumstances - Court grants bail considering petitioner's long custody since 07.07.2021, status as a first-time offender, progress in trial with 13 of 17 witnesses examined, and application of Article 21 of the Constitution of India - Directed to furnish bail bonds and surety to the satisfaction of the CJM/Duty Magistrate, report to police station monthly, and deposit an FDR of Rs.2,00,000/- with the Trial Court [Paras 8-11].

Referred Cases:

- Nitish Adhikary @ Bapan Versus The State of West Bengal, SLP (Crl.) Nos.5769/2022
- Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s) 3221/2023

Representing Advocates:

Mr. G.S. Simble for the petitioner

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General, Haryana for the respondent.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.PC is for the grant of regular bail, in case FIR No.177 dated 07.07.2021 under Sections 21 and 29 of NDPS Act, 1985, registered at Police Station Division No.6, Ludhiana.

2. The brief facts of the case are that a secret information was received that Gagandeep Singh @ Gaggu and his mother Nirmal Kaur petitioner were habitual of selling intoxicant powder. Gagandeep Singh @ Gaggu was present near Sherpur Chowk, Ludhiana and selling intoxicant powder. He could be apprehended while doing so. Based on the information received, the police party proceeded to the spot and one person was found standing there, who ran away after throwing polythene envelope. The said envelope was found to contain 12 strips of Alprazolam tablets each containing 10 tablets. Therefore, a raid was conducted at the house of Nirmal Kaur and 50 grams intoxicant powder and 10 strips each containing 60 tablets of Alprazolam were recovered from her. Along with the said recovery, Rs.49,000/- and three mobile phones were also recovered. She was arrested. Subsequently Gagandeep Singh @ Gaggu was also arrested.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with in their proper perspective. No independent witness was joined at the time of search and seizure. As she was a first-time offender, in custody since 07.07.2021 and 13 out of the 17 prosecution witnesses had been examined so far, besides, the trial of the present case was not likely to be concluded anytime soon, therefore, petitioner is entitled to the concession of bail in view of the judgment of the Hon'ble Supreme Court in the case of **Nitish Adhikary @ Bapan Versus 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 **Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s) 3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM (NDPS) No.1323/2022**, decided on 04.05.2023.
4. On the other hand, the learned State counsel contends that commercial quantity of contraband has been recovered from the petitioner. Therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner is not entitled to the grant of bail. He, however, concedes that the petitioner was a first time offender, in custody since 07.07.2021 and 13 out of the 17 prosecution witnesses had been examined.
5. I have heard the learned counsel for the parties.
6. The Hon'ble Supreme Court in the case of **Nitish Adhikary @ Bapan Vs. 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.”

7. **In Hasanujjaman & others Versus The State of West Bengal,**

SLP (Cri.) 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; charge-sheet 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.
(emphasis supplied)
8. In the instant case, the petitioner is stated to be in custody since 07.07.2021 and 13 out of the 17 prosecution witnesses have been examined so far. She is also a first-time offender with no other case registered against her. In this situation, the rigors of Section 37 of the NDPS Act can be diluted 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 case of the petitioner can be considered for the grant of bail.
9. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner-Nirmal Kaur wife of Amarjit 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.

10. 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.
11. In addition, the petitioner (or anyone on her behalf) shall prepare an FDR in the sum of Rs.2,00,000/- 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.
12. The petition stands disposed of.

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