

**HIGH COURT OF PUNJAB AND HARYANA****Bench: Hon'ble Mr. Justice Pankaj Jain****Date of Decision: 2<sup>nd</sup> May 2024**

CRM-M-9273-2024 (O&amp;M)

**Roshan Singh** ..... **Petitioner****VS****State of Haryana** ..... **Respondent****Legislation:**

Section 439 of the Criminal Procedure Code, 1973 (Cr.P.C.)

Sections 15©, 27-A, 29, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

Section 167(2) of Cr.P.C.

Section 37 of the NDPS Act

**Subject:** Petition for grant of regular bail concerning FIR No.088 dated 13.03.2023 registered for offenses under NDPS Act at Police Station Pehowa, District Kurukshetra.**Headnotes:**

Bail Application – Narcotic Drugs and Psychotropic Substances (NDPS) Act – Application under Section 439 of the Cr.P.C. for regular bail in case registered under various sections of the NDPS Act, involving the recovery of 230 kg of poppy husk – Petitioner neither driver nor owner of the truck; co-accused granted bail – Prolonged incarceration without charge framing or witness examination considered – Held, considering petitioner's period of custody (over one year) and absence of criminal antecedents, bail granted subject to conditions – Precedents from Supreme Court applied concerning bail under NDPS Act in prolonged custody cases – [Paras 1-11]

**Referred Cases:**

- Rabi Prakash v. State of Odisha, S.L.P. (Crl.) No. 4169 of 2023.

- Mohammad Salman Hanif Shaikh v. State of Gujarat, S.L.P. (Crl.) No. 5530-2022.
- Chitta Biswas Alias Subhas v. State of West Bengal, Criminal Appeal No.245/2020.
- Gopal Krishna Patra @ Gopalrusma v. Union of India, Criminal Appeal No.1169 of 2022.
- Nitish Adhikary @ Bapan v. State of West Bengal, S.L.P. (Crl.) No. 5769/2022.

Representing Advocates:

Mr. Sanjiv Kumar Yadav for the petitioner

Mr. Gaurav Bansal, DAG, Haryana for the respondent

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**PANKAJ JAIN, J. (Oral)**

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.088 dated 13.03.2023, registered for the offence punishable under Section 15(C) of NDPS Act, 1985 (Sections 27-A, 29, 61 and 85 of NDPS Act, 1985 added later on) at Police Station Pehowa, District Kurukshetra.

2. As per the case of prosecution, a secret information was received regarding the petitioner alongwith Narender Singh son of Mahender Singh and Karam Singh son of Mukhtar Singh indulging in trade of narcotics. Petitioner alongwith the other two accused were apprehended riding truck bearing No.PB11-BR-9674 and 230 kg of poppy husk was recovered. Petitioner was apprehended from the spot sitting at the rear seat of cabin.

3. Counsel for the petitioner submits that the petitioner was neither the driver nor the owner of the truck. He has drawn attention of this Court to the order dated 17.11.2023, whereby driver of the truck Narinder Singh stands admitted to bail invoking Section 167(2) of Cr.P.C. and further submits that vide same order Karam Singh the 3<sup>rd</sup> person who was travelling also stands released on bail granting concession of 167(2) of the Code. Petitioner being a poor person could not arrange for funds to file bail earlier in time.

4. Custody certificate has been produced. As per the same, the petitioner has undergone 01 year, 1 month and 19 days and has no prior criminal antecedents. There are total 35 cited witnesses and till date, none of them has been examined. Counsel for the petitioner submits that despite the fact that the petitioner is behind bars for more than 01 year and even the charges could not be framed till date.

5. Learned counsel for the petitioner relies upon order passed by Apex Court in the case of **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.”*

<sup>1</sup> 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."*

7. Supreme Court in order dated 07.02.2020 passed by the Hon'ble Supreme Court in ***Criminal Appeal No.245/2020 titled as "Chitta Biswas Alias Subhas Vs. The State of West Bengal"*** was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as under: -

*"Leave granted.*

*This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019.*

*The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.*

*According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.*

*The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.*

*Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:*

*(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail. (b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."*

8. 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."*

9. 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 aforesaid terms. Pending application(s), if any, shall stand disposed of."*

10. Without commenting on the merits of the case, considering the period already spent by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cellphone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

11. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

12. Ordered accordingly.

13. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stand disposed off.

