

CRM-M-39675-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(254-3)

Date of decision: 27.02.2025

(1) CRM-M-39675-2022 (O & M)

Jasvir Singh @ Gaggu

.... Petitioner

V/s

State of Punjab

...Respondent

(2) CRM-M-63959-2023 (O & M)

Sukhdev Singh @ Sukha

.... Petitioner

V/s

State of Punjab

...Respondent

(3) CRM-M-7038-2022 (O & M)

Harmesh Singh

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. N.S. Sodhi, Advocate, (in CRM-M-39675-2022)
Mr. J.S. Sandhu, Advocate, (in CRM-M-63959-2023)
Mr. Piyush Sharma, Advocate, (in CRM-M-7038-2022)
for the petitioner(s).

Mr. Ankit Grewal, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of three criminal miscellaneous petitions i.e. CRM-M-39675-2022, CRM-M-63959-2023 and CRM-M-7038-2022 as they arise out of the same FIR.

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2. The petitioners, namely, Jasvir Singh @ Gaggu (in CRM-M-39675-2022), Sukhdev Singh @ Sukha (in CRM-M-63959-2023) and Harmesh Singh (in CRM-M-7038-2022) seek the grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.152 dated 16.09.2021 under Sections 18, 21, 23 and 29 of the NDPS Act, 1985, Sections 25 of the Arms Act, 1959 & Section 61 of the Punjab Excise Act, 1914 registered at Police Station Sadar Ferozepur, District Ferozepur.

3. For the sake of convenience, the facts are being taken from the petition bearing No. CRM-M-39675-2022.

4. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Sukhwinder Singh @ Sukha son of Gurmeet, Harmesh Singh (petitioner in CRM-M-7038-2022) son of Prem Singh, Jaswant Singh @ Chhinda Baba @ Shinda (since granted bail vide order dated 25.02.2025 passed in CRM-M-48002-2023), Amarjit Singh @ Bittu son of Natha Singh and Sukhdev Singh @ Sukha (petitioner in CRM-M-63959-2023) son of Ranjit Singh alongwith 5-6 unidentified persons were indulging in smuggling of opium, heroin and arms with Pakistan at the borders of Punjab and Rajasthan. Jasvir Singh @ Gaggu (petitioner in CRM-M-39675-2022) son of Phumman Singh and Chanu son of Hansa Singh were also active with these persons. If a raid was conducted, the recovery of drugs, arms and illicit liquor could be effected from the accused.

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During the course of investigation, the recovery of 8 kgs. and 500 grams of heroin was effected from near the border with Pakistan.

5. The learned counsels for the petitioners contend that the petitioners have been falsely implicated in the present case. The mandatory provisions of Sections 42 and 50 of the NDPS Act had not been complied with in their proper perspective. No independent witness was joined at the time of search and seizure. As they were first-time offenders, in custody since 17.09.2021, 17.12.2022 and 23.09.2021 respectively and only 10 out of the 27 prosecution witnesses had been examined so far, the trial of the present case was not likely to be concluded anytime soon and therefore, they were 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,* moreso, when a co-accused/Jaswant Singh @ Chhinda @ Shinda had been granted the similar relief and no recovery had been effected from any of the petitioners.

6. The learned State counsel, on the other hand, contends that commercial quantity of contraband had been recovered from the border area and the petitioners were named in the secret information. Therefore, in view

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of the bar contained under Section 37 of the NDPS Act, the petitioners were not entitled to the grant of bail. He, however, concedes that the petitioners were first time offenders, in custody since 17.09.2021, 17.12.2022 and 23.09.2021 respectively and only 10 out of the 27 prosecution witnesses had been examined so far.

7. I have heard the learned counsel for the parties.

8. 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.”

9. 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.

(emphasis supplied)

10. Admittedly, in '*Nitish Adhikary @ Bapan (supra) and Hasanujjaman & others (supra)*', the accused therein had been granted the concession of bail by the Hon'ble Supreme Court after they had undergone approximately one and a half years of custody. They were also first-time offenders as is borne out from the orders.

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11. In the instant case, the petitioners are stated to be in custody since 17.09.2021, 17.12.2022 and 23.09.2021 respectively and only 10 out of the 27 prosecution witnesses have been examined so far. They are first-time offenders with no other case registered against them. 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 petitioners can be considered for the grant of bail, moreso, when a co-accused has been granted the concession of bail.

12. Thus, without commenting on the merits of the case, the present petitions are allowed and the petitioners, namely, Jasvir Singh @ Gaggu (in CRM-M-39675-2022), Sukhdev Singh @ Sukha (in CRM-M-63959-2023) and Harmesh Singh (in CRM-M-7038-2022) are ordered to be released on bail subject to their furnishing bail bonds and surety bonds each to the satisfaction of learned CJM/Duty Magistrate, concerned.

13. The petitioners 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 they are not involved in any other crime other than the cases, if any, mentioned in their respective custody certificates dated 25.09.2024.

14. In addition, the petitioners (or anyone on their behalf) shall prepare an FDR in the sum of Rs.2,00,000/- each and deposit the same with

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the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioners from trial without sufficient cause.

15. These petitions stand disposed of.

16. A copy of this order be placed on the files of the connected petitions.

February 27, 2025
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No