

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

CRM-M-42748 of 2014

Date of decision : 30.03.2015

Balbir Singh alias Balvir Singh

..... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gagandeep Goel, Advocate for petitioner.

Mr. Neeraj Yadav, Assistant Advocate General
for respondent-State of Punjab.

DARSHAN SINGH, J.

This is the second petition under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter called as 'Cr.P.C.') for grant of regular bail filed by petitioner Balbir Singh alias Balvir Singh in case FIR No.96 dated 08.10.2013 under Sections 15 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'NDPS Act'), Police Station Hathur, Distt. Ludhiana.

As per prosecution allegations, on 07.10.2013, at about 08:30 p.m. during the course of Nakabandi, Inspector Dilbag Singh, SHO Police Station Hathur along with other police employees, got stopped

three vehicles i.e. Gypsy bearing registration No.DL-5C-3416, Canter bearing registration No.PB-08BE-8318 and Innova car bearing registration No.PB-10BX-7779 carrying poppy husk. The driver of the Gypsy namely Manpreet Singh and the driver of the Canter namely Charan Singh were apprehended at the spot. Whereas, the present petitioner, who was driving the Innova car managed to escape from the spot leaving the Innova car in the start mode. Total 80 bags of the poppy husk of 20 Kgs. each, were recovered from all the three vehicles. Four bags of 20 Kgs. each i.e. 80 Kgs. poppy husk was recovered from the Innova car being driven by the present petitioner. The petitioner was arrested. Since then, he is in custody. His first petition for regular bail was dismissed by this Court vide CRM No.M-31405 of 2014 on 17.09.2014. Hence, this second petition.

Learned counsel for the petitioner contended that he is in custody for the last one year and two months. During this long span of time, the trial has not been concluded. The prosecution story that accused-petitioner fled away from the spot, is totally unreliable as the petitioner is 60 years of age and number of police officials were present at the spot. He contended that the right of liberty is a fundamental right. The petitioner cannot be kept in custody indefinitely. The mandatory provisions of the NDPS Act have been violated. No independent witness has been associated to attest the recovery. So, the case of the prosecution is highly doubtful and petitioner deserves the concession of bail.

Per contra, learned State counsel pleaded that in this case

there is total recovery of 80 bags of 20 Kgs. each, of the poppy husk. Four bags containing 80 Kgs. poppy husk have been recovered from the vehicle being driving by the present petitioner. His name was disclosed at the spot by his co-accused. The recovery effected from the petitioner falls within the definition of commercial quantity. As per the provisions of Section 37 of the NDPS Act, he is not entitled for bail. He further contended that moreover, this is the second petition by the petitioner for grant of regular bail and, there is no change of circumstance. So, the petitioner does not deserve the concession of bail.

I have duly considered the aforesaid contentions.

This is the second petition moved by the petitioner for grant of regular bail. His first petition for grant of bail i.e. CRM-M-31405 of 2014 has been dismissed by this Court vide order dated 17.09.2014. It is settled principle of law that the second/subsequent bail application is only maintainable if there is any change in the fact situation or any new ground has accrued to the petitioner for the grant of bail. In the instant case, learned counsel for the petitioner has not been able to show as to what is the change in the fact situation of the case and how the fresh/new ground has accrued to the petitioner for entertaining the present petition for grant of bail, when his first petition has been dismissed on merits by this Court considering all the pleas raised before the Court.

The copy of the order dated 17.09.2014 passed in CRM-M-31405 of 2014 is available on record as Annexure P-3. At the time of the first petition for bail also, learned counsel for the petitioner had raised the

pleas that he was not present at the spot, the mandatory provisions of the NDPS Act have not been complied with and he has been falsely implicated. All these contentions raised by learned counsel for the petitioner were duly considered and did not find favour with this Court to grant the bail. So, now the petitioner cannot re-agitate the same grounds for grant of bail, which have already been considered .

No doubt a citizen has a fundamental right of protection against arrest and detention as per Article 22 of the Constitution of India but the said right is regulated by the law for the time being in force. In this case, the petitioner has been arrested under the provisions of the NDPS Act. This fact is also not disputed that the recovery effected from the possession of the petitioner falls in the definition of commercial quantity. The grant of the bail in this case is governed by the provisions of Section 37 of the NDPS Act, which reads as under:-

“Section 37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2 [offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are

reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

As per Section 37 Sub-section (1) (b) Sub-clause (ii) where the Public Prosecutor opposes the application, the bail can only be granted if the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit such offence while on bail. There is no material on record to satisfy the aforesaid conditions. Unless these conditions are satisfied the bail cannot be granted to an accused, who has been found in possession of the commercial quantity of the contraband under the provisions of the NDPS Act. So, there is no question of the violation of any fundamental right of the petitioner.

Mere this fact that he is in custody for the last one year and two months is also not a ground to override the mandatory provisions of Section 37 of the NDPS Act.

Thus, keeping in view my aforesaid discussion, the present petition has no merits and the same is hereby dismissed.

30.03.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**