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

CRM-M-39263 of 2015

Date of decision: November 28, 2016

Rajinder Kapur

.....Petitioner

Versus

Central Bureau of Investigation

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. H.S. Multani, Advocate for the petitioner.

Mr. S.S. Sandhu, Standing Counsel for CBI.

A.B. CHAUDHARI, J (Oral)

The petitioner seeks grant of regular bail in FIR No.RC
SIB 2006 E 0003.EOU-V dated 05.02.2006, under Sections 29 read
with Sections 8 & 22 of the Narcotic Drugs and Psychotropic
Substance Act, 1985 (for short 'NDPS Act') and Section 27 of the
Drugs and Cosmetics Act, 1949, registered at Police Station I/EOU.V.
New Delhi.

Heard learned counsel for the rival parties on the last date
as well as today at length.

Learned Special Judge, Moga had made an order dated
13.10.2015 in which, it was observed that the petitioner was
absconding for a long period of 9 years and therefore, the benefit of
regular bail cannot be given to him. The second reason given in the
above said order is that the contents of the contraband allegedly found

was admitted. It is on these premise, the application for bail was dismissed by the learned Special Judge, Moga. Hence, the present petition.

Learned counsel for the petitioner submits that it is co-accused and not the petitioner who was found in the actual possession of the contraband, but the allegations against the petitioner was that he had supplied the contraband to the co-accused. But then the petitioner is a licence holder of the shop.

Learned counsel for the respondent-CBI opposed the petition and argued that the petitioner would not be entitled to grant of regular bail he having absconded for a long period of 9 years and at any rate, the offence being under the NDPS Act, the relief of bail cannot be extended to him.

Upon hearing the learned counsel for the rival parties and upon looking at the record, I find that the learned Special Judge has made a factual error in abruptly coming to the conclusion that the petitioner was absconding for a long period of 9 years. That is not correct. As a matter of fact, the petitioner applied for grant of regular bail on 05.11.2009 which was dismissed. Thereafter, he had again applied for regular bail on 27.04.2010 and that application was also dismissed. The petitioner then approached this Court for quashing the FIR by filing a petition on 09.08.2010 and during the pendency of that petition, this Court had granted interim relief or stay of the further proceedings on 13.07.2011. That interim order of stay continued till 24.07.2014 when the interim order vacated. Thereafter,

on 30.09.2015, the petition was finally dismissed and it is then, before the dismissal of the petition and after vacation of the interim order, the petitioner was arrested on 10.08.2015. It is thus, clear that the petitioner was not absconding for a long period of 9 years as stated and was in fact, in the Court in the above proceedings. There is a order dated 13.10.2009 by which he was declared P.O. but then fact about the pendency of the petitions as stated above, cannot be ignored nor there is any reference about the same in the P.O. order and therefore, the P.O. order dated 13.10.2009 would not wash away the filing of the proceedings as stated above. The second reason given by the learned Special Judge, Moga is also not well supported.

The counsel for the petitioner relied on the judgments of Delhi High Court and this Court and as against which, learned counsel for the respondent-CBI countered the submissions by saying that the Single Judge of this Court has taken contrary view in CRM-M-14115 of 2009 and therefore, the submissions on the question qua contraband cannot be accepted.

In my view, the reading of the entire record of the trial Court shows that the order was mainly on the ground of abstention for a period of 9 years which is factually wrong and secondly, the reason about who was found in actual possession of the contraband is also not well supported. There is no other reason in the impugned order. Rather, there is no consideration of the application for bail on merits. Now since the counsel for the parties have raised a debatable issue on

the basis of the judgments of Delhi High Court as well as this Court, I

think it would be appropriate for the parties to go before the trial Court with the correct factual foundation and get a correct adjudication from the trial Court on the issue of prima-facie case for grant or rejection of case as the case may be.

Petition is thus, disposed of with a direction to the learned Special Judge, Moga to consider all the factual and legal facts including the judgments cited before me by both the parties. The petitioner is at liberty to apply for bail by filing fresh bail application before the learned Special Judge, Moga within a period of one week from today and thereafter, the trial Judge shall endeavor to decide the said application within a period of 3 weeks thereafter, after hearing both the sides.

(A.B. CHAUDHARI)
JUDGE

November 28, 2016

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No