

Harsha Rani
2017.11.20 16:10

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(220)

CRM-M-26362-2017

Decided on: November 09, 2017.

Lawar Singh @ Bachi

.... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.S. Sidhu, Advocate, for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

M.M.S. BEDI, J (ORAL)

Petitioner is undertrial in a case of recovery of 125 bags of poppy-husk total weighing 4400 kgs and was allegedly found giving directions to load the poppy-husk from the truck to tractor trolleys and his car. He has been in custody since 07.08.2013. Five co-accused of the petitioner allegedly ran away from the spot. Petitioner has been granted concession of interim bail by Single Bench of this Court and a reference has been made for applying the parameters for the undertrials in similar manner as has been done by the Division Bench in **Daler Singh Vs. State of Punjab 2007 (1) R.C.R. (Criminal) 316 (DB)**, in the cases of convicts.

Learned counsel for the petitioner has admitted that in view of the observations of the Apex Court in **Union of India Vs. Ismile, 2015 (2) DC (Narcotics) 397**, and **Ratan Kumar Vishwas Vs. State of Uttar Pradesh AIR 2009 SCC 581** and in the light of provisions of Section 32-A read with Section 37 of the NDPS Act which are applicable in cases of appeal, the status of an undertrial who is presumed to be innocent during pendency of the trial and a convict in an appeal who has been found to be guilty by the

trial Court, is different. He has submitted that in view of the above statutory provisions and the judgments, it will not be necessary for laying down any parameters for grant of bail to the undertrials in the cases under the NDPS Act. The discretion to grant bail in context to the provisions of law is always that of the Court concerned considering the facts and circumstances of each case and that no straight jacket formula can be provided by laying down any parameter in this regard. The learned counsel submitted that in view of the above circumstances, point raised in the reference may be left open and on the basis of the period of detention suffered by the petitioner and he having not committed any offence during period of interim bail, his bail may be confirmed during pendency of the trial.

Counsel for the State has also submitted that in view of the discretion of the Court of competent jurisdiction to grant bail during pendency of the trial, no parameters are required to be laid down.

In view of the submissions made by counsel for the petitioner as well as counsel for the State, we deem it appropriate to dispose of this reference observing that no straight jacket formula can be laid down for grant of bail pending trial, as the facts and circumstances of each case would warrant different consideration in each case for exercise of judicial discretion for grant of bail.

The reference is disposed of with above observations.

Since the petitioner, during period of interim bail, has not committed any offence till date, nine prosecution witnesses out of twenty six, have already been examined till date and in view of his custody for a period of more than four years, it is ordered that the interim bail granted to him is hereby confirmed. The petitioner would remain on bail during

pendency of the trial subject to the condition that he will not indulge in similar activity during pendency of the trial.

In case of any such violation, it will be open to the prosecution agency to seek cancellation of bail.

(M.M.S. BEDI)
JUDGE

November 09, 2017.
harsha

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No