

CRM-M-4118-2020

Date of Decision:01.12.2021

Hardeep Singh alias Tota

.....Petitioner

Vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Munish Kamboj, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

Case heard *via* video conference.

On 19.01.2021, the following order was passed by this court:-

“Case heard by video conferencing.

By this petition, the petitioner seeks the concession of 'regular bail' under the provisions of Section 439 Cr.P.C., upon FIR No.0090, dated 22.08.2019, having been registered at Police Station Odhan, District Sirsa, alleging therein the commission of an offence punishable under Section 22(c) of the Narcotics and Psychotropic Substances Act, 1985.

Learned counsel for the petitioner submits that the petitioner having in custody for 1 year and about 5 months now, with the trial not even having effectively started other than framing of the charge, the petitioner deserves to be admitted to bail, with also there being no other criminal case registered against him.

Learned State counsel on the other hand submits that with more than 2 kgs. of Tramadol Hydrochloride having been recovered from the petitioner, with the commercial quantity being above 250 grams, he cannot be admitted to bail also in fact in terms of the judgment of the Supreme Court in “**State of Kerala etc. vs. Rajesh etc.**” 2020 (1) RCR (Cr.) 818.

Having considered the above, though otherwise learned State counsel may be right, simply looking at the period of custody of the petitioner, and the stage of the trial, with there stated to be no other criminal case registered against him, he is ordered to be admitted to interim bail, upon him furnishing adequate bail and surety bonds to the satisfaction of the trial court/CJM/Duty Magistrate concerned, of course with the aforesaid bail and surety bonds to be of an adequate amount to the

complete satisfaction of that court, looking at the quantity of contraband alleged to have been recovered from him.

Naturally, on the next date of hearing, the counsel for the petitioner would be required to address arguments in terms of the judgment relied upon by the learned State counsel.

The exact stage of the trial at that stage would also be informed to this court.

Adjourned to 22.03.2021.”

Thus, the petitioner was admitted to interim bail essentially looking at the period of the custody of the petitioner and the stage of the trial at that stage (obviously in view of the ongoing pandemic).

Today learned State counsel submits that out of 11 prosecution witnesses 8 prosecution witnesses have already been examined, with the next date of hearing before the trial court being 03.12.2021, and therefore there would be no reason to allow the petitioner to continue to remain on interim bail, looking at the quantity of contraband recovered from him (as per the prosecution) and now with the trial duly progressing.

Learned counsel for the petitioner on the other hand submits that the petitioner never having misused the concession of bail for the past 10 ½ months, even in terms of Section 37 (1)(b)(ii) of the NDPS Act, 1985, he would be entitled to continue to remain on bail.

The said provision reads as follows:-

“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 27A 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.”

A reading of the aforesaid provision obviously shows that upon the court being satisfied on the two conditions stipulated in the provision, an accused may be released on bail; i.e. the court is satisfied that he is not guilty of the offence and that he not likely to commit any offence while on bail.

Learned counsel for the petitioner submits that the petitioner had been actually arrested from an intersection/*chowk* of the village no eyewitness was even attempted to be joined, and therefore infact he has been falsely implicated in the matter.

Whereas that issue could have been considered by this court at the time that the petition came up hearing initially, now, with the trial almost at its fag end, in my opinion it would not be correct for this court to make any comments on the actual merits of the case which may influence the trial; and consequently, without making any such comment, either for or against the case of the prosecution or the accused, simply in view of the bar contained in Section 37 of the NDPS Act, 1985, I see no reason to continue with this petition which is therefore dismissed, with the interim order dated 19.01.2021 hereby vacated.

Naturally, the trial court would endeavour to conclude the trial at the very earliest now.

December 01, 2021

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : NO