

CRM-M-28569 of 2021

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

(Proceedings through video conferencing)

CRM-M-28569 of 2021
Date of decision: 10.08.2021

Jagsir @ Ghuaghru

.....Petitioner

vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Ms. Manpreet Ghuman, Advocate, for the petitioner.
Ms. Vibha Tiwari, AAG, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

Custody certificate of the petitioner sent through e-mail is taken on record.

Through instant third petition under Section 439 Cr.P.C. petitioner seeks the grant of regular bail in FIR No.406 dated 15.07.2016 registered under Sections 15 and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 147, 149, 332, 353, 186, 224 and 225 IPC, at Police Station Rattia, District Fatehabad.

The brief facts of the case are that on 15.07.2016, during the course of Nakabandi, the petitioner came on a car from the side of Ratia, who on seeing the police party turned the car towards the village and police personnel chased him. When the Police party reached near the house of the petitioner, he was found entering his house after unloading

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the bags from the car. On hearing the call of Police party, he tried to run away. When the Police party tried to overpower him, his wife Nisha and several other co-accused gathered at the spot and attacked upon them and helped Jagsir Singh in running away. On checking room, 12 bags containing Poppy Husk were recovered, out of which 6 bags were containing 20 Kgs. each, seventh bag was containing 10 Kgs., four bags were containing 13 Kgs. and one another bag was containing 8 Kgs. Poppy Husk. After separating two samples of 100 Grams each from each bag, the sample parcels and bags were taken into possession. The petitioner was arrested on 19.11.2018.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case. He is not named in the FIR. Petitioner has been implicated only on the basis of disclosure statement of the main accused, which has no evidentiary value. Petitioner is in custody since 19.11.2018. Conclusion of petitioner's trial may take a sufficient long time especially in the prevailing circumstances due to Covid-19 pandemic. Therefore, no useful purpose would be served by keeping the petitioner in custody.

On the other hand, learned State counsel vehemently opposed the grant of bail to the petitioner that he is a habitual offender. In the present case, petitioner was found in possession of psychotropic substances which falls within the category of "commercial quantity". In the present petition, petitioner has wilfully concealed the fact the he was earlier declared as a proclaimed offender on 07.04.2018. He further argued that this is the third bail application and earlier bail applications

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filed on behalf of the petitioner raising similar pleas have already been dismissed by this Court.

I have heard learned counsel for the parties and gone through the record.

According to the prosecution, 190 kgs of poppy husk was recovered from the room of the petitioner, who is allegedly actively involved in the work of transportation of narcotics. The alleged recovery of contraband falls under the category of “commercial quantity”.

Moreover, this is the third petition for grant of regular bail to the petitioner. First petition i.e. CRM-M-36061 of 2019 was dismissed on merits by this Court vide order dated 30.01.2020 and second petition i.e. CRM-M-31328 of 2020 was got dismissed as withdrawn on 24.11.2020.

The law relating to successive bail applications is well-settled. An accused has right to make successive applications for grant of bail. But the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications (See **Kalyan Chandra Sarkar v. Rajesh Ranjan : AIR 2004 SC 1866**). A bail application in a case where earlier applications have been rejected is maintainable only when there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete (See **Kalyan Chandra Sarkar v. Pappu Yadav : AIR 2005 SC 921**).

Once an application for bail is rejected by a speaking order, the

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change in circumstance pleaded to maintain a subsequent application shall not be specious but real and genuine (See **G.R. Ananda Babu v. State of Tamil Nadu : 2021 SCC OnLine SC 176**).

A perusal of the averments made in this 3rd bail petition shows that the petitioner has failed to show any better or fresh particulars in this petition which were not demonstrated in the earlier petitions nor any substantial change in the circumstances could have been pointed out by learned counsel for the petitioner.

Even the spread of the pandemic COVID-19 cannot be projected as a sufficient ground to release an accused on bail as has been held by the Hon'ble Supreme Court in ***State of Kerala v. Mahesh – 2021 SCC OnLine SC 308***.

Having considered the above aspects, in the absence of any change in fact situation or law with regard to the case on hand, I find that the petitioner is not entitled to be released on bail at this stage. The bail application is liable to be dismissed.

Consequently, the bail application is dismissed.

August 10, 2021
R.S.

(Ashok Kumar Verma)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No