

CRM-M-40116 of 2021

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

(Proceedings through video conferencing)

CRM-M-40116 of 2021
Date of decision: 12.10.2021

Ashif

.....Petitioner

vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Sandeep Verma, Advocate, for the petitioner.
Ms. Ankita Ahuja, AAG, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

Through instant third petition under Section 439 Cr.P.C. petitioner seeks the grant of regular bail in FIR No.63 dated 15.04.2019 registered under Sections 20 and 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Sanoli, District Panipat.

As per the FIR, 21 Killo 100 Grams of Ganja leaves were recovered from the vehicle of the accused. As per disclosure statement, premises of Mehtab alias Piru son of Hanif was also raided. The accused in pursuance of their disclosure statements also got recovered 11 Kilo 400 Grams Ganja leaves and the total weight of recovered contraband comes to 32 Kilo 500 grams, which clearly falls under the category of commercial quantity.

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Learned counsel for the petitioner contends that the petitioner is in custody since 15.04.2019. Out of nine prosecution witnesses only one PW has been examined. 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. In the present case, petitioner and his co-accused were found in possession of contraband which falls within the category of "commercial quantity". Trial is in progress. One prosecution witness has already been examined and remaining PWs, case is now fixed for 15.12.2021. She further argued that this is the third bail application and earlier two bail applications i.e. CRM-M-34446 of 2019 and CRM-M-36501 of 2020 filed on behalf of the petitioner raising similar pleas have already been dismissed by this Court vide orders dated 28.01.2020 and 07.12.2020, respectively.

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

Admittedly, first and second bail applications of the petitioner were dismissed by this Court vide detailed orders dated 28.01.2020 and dated 07.12.2020, respectively.

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

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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 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 long custody cannot be projected as a sufficient ground to release an accused on bail.

Hon'ble Supreme Court in **State of Kerala Etc. Vs. Rajesh Etc., (Criminal Appeal No(S).154-157 of 2020** decided on 24.01.2020) has observed as under:-

“20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by

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Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

Keeping in view the above law laid down by the Hon'ble Supreme Court, this Court while dismissing the earlier bail applications of the petitioner has observed that the bar of Section 37 of the NDPS Act will apply in this case and the petitioner is not entitled to the benefit of bail.

In view of the foregoing discussions and in absence of any substantial change in the circumstances after rejection of the earlier bail applications of the petitioner by this Court on 28.01.2020 and 07.12.2020, this third bail application cannot be entertained by this Court and the same is hereby dismissed.

October 12, 2021
R.S.

(Ashok Kumar Verma)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No