

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

118

CRM-M No.41964 of 2020 (O & M)
Date of decision:25.05.2021

James O' Igwi

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Arjun Veer Sharma, Advocate for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

CRM-14898-2021

For the reasons given in the application, it is allowed. Hearing of the main petition is preponed to today and is ordered to be taken on Board.

Main Case

Vide the instant petition filed under Section 439 of the Code of Criminal Procedure, the petitioner seeks grant of regular bail in FIR No.109, dated 29.03.2017 registered under Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short “the NDPS Act”) registered at Police Station Zirakpur, District Sahibzada Ajit Singh Nagar, Mohali, Annexure P-1.

As per the version of the prosecution, Munish Kumar @ Monu

was apprehended by the police with 18 grams of intoxicating powder which he was carrying in a bag. During investigation, he named the petitioner as the person from whom he had purchased the contraband. On the basis of his statement, the police arrested the petitioner from New Delhi on 31.03.2017 and recovered 190 grams of Cocaine and 300 grams of Heroin from him.

Counsel for the petitioner has contended that the raiding party conducted the search of the petitioner at an area beyond their jurisdiction and failed to comply with the provisions of Section 166 of the Code of Criminal Procedure. He urges that at the time when the recovery was allegedly effected, no independent witness was present and the mandatory provisions of the NDPS Act have been violated. According to the counsel, after the presentation of the challan and framing of the charges, one Anita Rani, who was aggrieved of victimization by the police, approached this court seeking fair investigation while levelling serious allegations against the police and this Court vide order dated 16.10.2018, Annexure P-2, passed in CRWP-975-2017 ordered that further proceedings pursuant to FIR, Annexure P-1, and another FIR be stayed. Counsel submits that the petition is pending for 26.08.2021 and the stay order continues till date. He asserts that the petitioner is not involved in any other case under the provisions of the NDPS Act, though he has been falsely named in two criminal cases for allegedly having committed jail offences. He submits that the investigation qua the petitioner is complete, challan has been presented, charge has been framed, prosecution evidence is underway and there is no possibility of

the trial coming to a conclusion in the near future.

Opposing the petition, State counsel upon instructions from HAC Gulab Singh, submits that the petitioner is a citizen of Nigeria and it has been noticed that when foreign nationals are released on bail they invariably abscond or go underground, which hampers the trial. It is his argument that the drugs recovered from the petitioner fall within the ambit of commercial quantity and the bar as contained in Section 37 of the NDPS Act is attracted. As per his instructions, the challan was presented on 26.09.2017, charge was framed on 02.01.2018, though he could not deny the fact that the trial has been stayed by this Court.

I have considered the rival submissions of the parties.

Hon'ble Supreme Court in **Union of India vs. K.A. Najeeb**, **2021 SCC Online SC 50** has held that once timely trial is not found to be possible, Court is obligated to enlarge the accused on bail. It is held as under:-

*“13. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS”) which too have somewhat rigorous conditions for grant of bail, this Court in **Paramjit Singh v. State (NCT of Delhi)**, (1999) 9 SCC 252, **Babba alias Shankar Raghuman Rohida v. State of Maharashtra**, (2005) 11 SCC 569 and **Umarmia alias Mamumia v. State of Gujarat**, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such*

special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians.

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16. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India, (1994) 6 SCC 731, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities or real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.”

Facts of the present case deserve to be examined in the backdrop of the observations of the Hon'ble Apex Court. The trial of the present FIR has been stayed by this Court in a writ petition, which is pending and the interim order is continuing. At one stage, by order dated 17.12.2020, the instant petition was directed to be taken up with the said petition, however, the same could not be done due to the restrictive

functioning of the Court because of the spread of the pandemic and there does not seem to be any possibility in the immediate future of the resumption of the trial.

As per the custody certificate, which is on record, the petitioner has been in custody as an accused from 06.04.2017 to 10.06.2019 and from 21.06.2019 onwards. The charges in the trial were framed in January, 2018 and some of the witnesses have been examined by the prosecution but as the trial is not likely to conclude soon, the petitioner continues to be behind bars.

Coming to the submission of the State regarding the petitioner being a foreign national, suffice it to notice that the Hon'ble Supreme Court in **Lachhman Dass vs. Resham Chand Kaler and another 2018 (3) SCC 187** has held that “the law under Section 439 of Cr.P.C., 1973, is very clear and in the eyes of the law every accused is the same irrespective of their nationality.” To allay the apprehension expressed by the State counsel, this Court is of the view that stringent conditions can be imposed while releasing the petitioner on bail.

Keeping in view the above facts and circumstances, period of incarceration of the petitioner, which by now is more than four years and one month and the fact that the trial is not likely to come to an end in the near future, the petitioner is ordered to be released on bail on his furnishing heavy bail/ surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate.

Besides the above, this Court deems it appropriate to impose the following additional conditions:-

- (i) the petitioner shall report at the police station concerned twice every month i.e. on the 1st and 3rd Monday of each month at 11 am;
- (ii) the petitioner shall give his residential address alongwith his proof of actual stay and his mobile number to the SHO of the concerned police station, who shall make random calls to the petitioner and keep a tab on his whereabouts;
- (iii) the petitioner shall surrender his passport with the trial court, in case he has not already done so;
- (iv) the petitioner shall remain present before the trial court on each and every date of hearing and shall duly co-operate with the court during the course of the trial;
- (v) that the petitioner shall furnish an undertaking that henceforth he will not indulge in any criminal activity.

In case of violation of any of the above conditions, it shall be open to the trial court to seek cancellation of the bail.

It is clarified that any observation made hereinabove shall construed to be an expression of opinion on the merits of the case.

25.05.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No