

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-15122-2022 (O&M)
Date of Decision:- 27.5.2022

Vijay alias Rakko

.... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Kapil Aggarwal, Advocate, for the petitioner.

Mr. Krishan K. Chahal, Addl. A.G. Haryana.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 9.3.2021 passed by learned Additional Sessions Judge, Hisar (Annexure P-13) cancelling his bail as had been granted to him in a case arising out of FIR No.407, dated 28.10.2019, Police Station Narnaund, District Hisar, under Section 20 of NDPS Act.
2. A few facts necessary to notice for disposal of this petition are that the petitioner initially came to be involved in FIR No. 192 dated 25.6.2018, Police Station Narnaund, District Hisar, under Section 20 of NDPS Act, wherein allegations were to the effect that he had been found in possession of 19.6 Kgs of '*Ganja*'. He was granted regular

bail by the trial Court vide order dated 1.9.2018 (Annexure P-1) and consequently was released on 3.9.2018.

3. Thereafter, the petitioner was involved in another case i.e. the present case arising out of FIR No.407 dated 28.10.2019, Police Station Narnaund, District Hisar, under Section 20 of NDPS Act, wherein the allegations pertain to recovery of 4.6 KG of '*Ganja*'. In the said case, the petitioner had not been arrested at the spot, but was later on arrested on the basis of his confessional statement.
4. In this case also, the petitioner was ordered to be released on bail by the trial Court vide order dated 23.4.2020 (Annexure P-3). Thus, the petitioner was on bail in both the cases and the trials were proceeding in respect of both the cases.
5. Subsequently, the petitioner was convicted in respect of the trial arising out of FIR No. 192 dated 25.6.2018, Police Station Narnaund, District Hisar, under Section 20 of NDPS Act, vide judgment dated 26.2.2021 passed by learned Additional Sessions Judge, Hisar and wherein order of sentence was passed on 2.3.2021 and the petitioner was taken into custody on 26.2.2021 itself. The petitioner having been taken in custody on account of his conviction on 26.2.2021 in trial arising out of FIR No.192 dated 25.6.2018, could not appear in the other trial, which was pending against him, which had arisen out of present FIR i.e. FIR No.407, dated 28.10.2019, Police Station Narnaund, District Hisar, under Section 20 of NDPS Act, on the date fixed before the trial Court i.e. 9.3.2021 and consequently his bail was canceled.

6. Learned counsel for the petitioner has submitted that his absence as on 9.3.2021 was on account of reason beyond his control and that it was for the authorities concerned to have produced him before the trial Court in the proceedings arising out of the other FIR.
7. Learned counsel for the petitioner has submitted that subsequently his sentence, as awarded in FIR No. 192 dated 25.6.2018, was ordered to remain suspended vide order dated 15.2.2022 (Annexure P-6) passed by this Court, but despite the said suspension he has not been released since his bail as granted in the other case stands canceled vide order dated 9.3.2021.
8. Learned counsel has submitted that he has regularly been appearing in both the trials and never intended to flee from justice and that his absence as on 9.3.2021 was unintentional and infact was beyond his control having been taken into custody pursuant to conviction in the other case.
9. Notice of motion had been issued in this case.
10. Learned State counsel has today file reply by way of affidavit of Sh. Safiuddin, Deputy Superintendent of Police, Sadar, Hansi, District Hisar, has been filed. The same is taken on record.
11. The aforesaid position regarding conviction of the petitioner vide judgment dated 26.2.2021 in trial arising out of FIR No.192 dated 25.6.2018 is not disputed in the reply filed by State. However, a stand has been taken in the reply that the petitioner himself was supposed to apprise the Court concerned about the correct factual

position and that in these circumstances the order in question cannot be said to be suffering from any infirmity.

12. I have considered rival submissions addressed before this Court.
13. The impugned order as passed by the trial Court had been passed on the basis of the circumstances and facts as available before the trial Court i.e. the absence of the petitioner. The trial Court had not been apprised about the fact that the petitioner stands convicted in another case and had been taken into custody in the other case. In these circumstances impugned order dated 9.3.2021, having been passed without all the relevant facts having been placed before it, is hereby set aside.
14. The petitioner is directed to be produced before the trial Court by the jail authorities on 30.5.2022 and the trial Court shall release the petitioner on bail. Since the bail bonds and surety bonds have already been furnished earlier, the same may be restored unless the trial Court feels necessity of seeking any fresh bail bonds and surety bonds. In case, the The trial Court feels necessity, it can impose any other condition so as to ensure the regular appearance of the petitioner.

27.5.2022

Mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No