

(210) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26285-2022
Date of Decision: 09.12.2022

MANI RAM

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.K. Rohilla, Advocate with
Ms. Poonam Rohilla, Advocate
for the petitioner.

Mr. Neeraj Poswal, Asst. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.92 dated 13.02.2022 registered under Sections 20/25 of the NDPS Act, 1985 at Police Station Gannaur, Sonipat.

2. The brief facts of the case are that while the police party was on patrolling duty for investigation, secret information was received that Mani Ram (petitioner) son of Rajender, Rajpal @ Billu son of Sube Singh and Vishal son of Hoshiyar @ Hoshiyare were moving around in the village having a heavy quantity of *charas* with them in a black colour Tata Harrier Car and if a barricading was done on the road from village Panchi to Rajpur road, the three could be apprehended along with a vehicle and narcotics.

Based on the secret information, the Police party started checking the vehicles and after some time the offending vehicle came there and was stopped. Two youngsters alighted from the said vehicle while third one was sitting on the driver seat of the car out of the said two boys, one boy succeeded in fleeing away from the spot and the second was overpowered by the police officials. On inquiry, he disclosed his name as Mani Ram (petitioner) and the other who was driving the vehicle disclosed his Rajpal @ Billu. The boy who ran away from the spot was stated to be Vishal son of Hoshiyar. The search of the vehicle was undertaken and 04 packets of *charas* alias *sulfa* wrapped in a black colour plastic (Panni) were found in the dash board of the car and on weighing turned out to be 1 kg. 800 grams.

3. The petitioner had sought the concession of bail and was granted interim bail vide order dated 23.08.2022. The said order is reproduced hereinbelow:-

“The learned counsel for the petitioner contends that the petitioner could not be said to be in the conscious possession as the recovery was effected from the compartment of the vehicle and the owner, who was driving the vehicle, is Rajpal @ Billu. The petitioner is said to be a traveller in the said car. He relies upon the judgments passed in the cases of ‘Sukhdev Singh @ Sukh versus State of Punjab (CRM-M-984-2021 decided on 19.04.2022) and Jai Singh versus State of Haryana (CRM-M-38649-2019 decided on 09.01.2020)’ to contend that the petitioner could not be said to be in conscious possession of the contraband.

The learned counsel for the State submits that the challan is yet to be filed in this case as the FSL report is still awaited.

Adjourned to 14.11.2022.

In the meantime, the petitioner is directed to be released on interim bail subject to the satisfaction of the Illaqa Magistrate/Trial Court concerned.”

Thereafter, this matter has come up for final consideration.

4. The learned counsel for the petitioner contends that the petitioner had taken a lift from Rajpal @ Billu who was the driver and owner of the vehicle. The recovery was effected from the glove box of the car and the petitioner was unaware of the presence of the contraband. In fact, the petitioner and his co-accused Rajpal @ Billu belong to the same village but other than that, the petitioner has no connection with the main accused Rajpal @ Billu. The petitioner cannot be said to be in conscious possession of the contraband. Reliance is placed on the judgments in **Sukhdev Singh @ Sukh Versus State of Punjab, CRM-M-984-2021, decided on 19.04.2022** and **Jai Singh Versus State of Haryana, CRM-M-38649-2019, decided on 09.01.2020**. The petitioner has been in custody since 13.02.2022. None of the 14 prosecution witnesses have been examined so far. Even otherwise, the petitioner is a first time offender and therefore his clean antecedents also entitle him to the grant of bail and a *prima facie* satisfaction under Section 37 of the NDPS Act can be recorded.

5. A reply dated 07.12.2022 has been filed on behalf of the respondent-State by the learned State counsel by way of an affidavit of Atma

Ram, HPS, Deputy Superintendent of Police, Ganaur, Sonipat and the same is taken on record. While referring to the reply, he contends that the petitioner was travelling in the vehicle which was owned and being driven by Rajpal @ Billu. He was aware of the fact that contraband was lying in the glove box as was apparent from the disclosure statements of the accused. During investigation call detail records of all the accused were obtained as per which they were found to be in constant touch with each other and the three accused also belong to the same village Panchi Jattan, District Sonipat. The vehicle stood in the name of the accused Rajpal @ Billu. He contends that in view of the judgment in **Union of India through Narcotics Control Bureau, Lucknow Versus Md. Nawaz Khan, 2021 AIR (SC) 4476**, the petitioner was not entitled to the grant of bail.

6. I have heard the learned counsel for the parties at length.

7. The petitioner, the owner of the vehicle Rajpal @ Billu and the third accused Vishal (absconding) all belong to the same village. It is the contention of the petitioner that he was known to Rajpal @ Billu being a co-villager but was unaware of the contents of the glove box. The phone records only established that the three accused knew each other. In the case of **Union of India through Narcotics Control Bureau, Lucknow Versus Md. Nawaz Khan**(supra) relied upon by the counsel for the State, the bail granted was cancelled on account of the fact that the accused had travelled from Nagaland to Uttar Pradesh with each other and otherwise were in telephonic contact with each other. In the present case, however this is not so. As has

already been stated above, the petitioner and his co-accused are resident of the same village and were arrested not far from their village.

This Court in the case of *Sukhdev Singh @ Sukh Versus State of Punjab* (supra) had granted bail to a pillion rider when the recovery was from under the seat of the driver/owner of the motorcycle. The case of the petitioner is somewhat similar to that of Sukh Dev Singh.

In *Jai Singh Versus State of Haryana* (supra) this Court granted bail to the petitioner therein when it was found that he was a traveller in a canter from which contraband was recovered and which was being driven by another accused.

8. Thus, keeping in view the fact that the petitioner is in custody since 13.02.2022, none of the 14 prosecution witnesses have been examined and the petitioner is a first-time offender, the further incarceration of the petitioner is not required. Even otherwise, the rigors of Section 37 of the NDPS Act can be relaxed to an extent in view of the attending facts and circumstances.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Mani Ram son of Rajender is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the Trial and inform in writing each time that he is not involved in any other crime other than the cases mentioned in this order.

11. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited, as per law, in case of the absence of the petitioner from Trial without sufficient cause.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

09.12.2022

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No