

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CRM-M-25320 of 2020 (O&M)
Date of decision:7.3.2022

Paramjeet Singh

... Petitioner

versus

Narcotic Control Bureau

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.S.S.Brar, Advocate,
for the petitioner

Mr.Rajiv Sharma, Senior Standing Counsel
for the respondent-NCB

...

AMOL RATTAN SINGH, J. (Oral)

This petition has been continuing for the past 1-1/2 years.

On 1.10.2021, the following detailed order was passed by this court, as has also been specifically referred to by learned counsel for the respondent-Bureau today:-

“Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 439 of the Cr.P.C., the petitioner seeks the concession of ‘regular bail’ in a ‘supplementary complaint’ dated 18.07.2020, filed by the Narcotics Control Bureau, Chandigarh, Zonal Unit Sector-25, Chandigarh, through its Intelligence Officer, before the learned Addl. Sessions Judge, Sirsa, in complaint case NCB Crime no.14/2015, alleging therein the commission of offences

punishable under Sections 8/18/29/30 of the NDPS Act.

Various orders having been passed on different dates, the order was passed on the last date of hearing, i.e. 29.09.2021 reading as follows:-

“CRM-31120-2019

Vide this application, the respondent-Bureau seeks to place on record the charge-sheet issued to the petitioner and his co-accused on 20.08.2021, by the learned Judge, Special Court (Additional Sessions Judge, Sirsa), the said application having been filed pursuant to the last order passed by this court.

The respondent-Bureau also seeks to place on record a charge-sheet issued by the same court on 10.04.2017 to three co-accused of the petitioner, i.e. Sukhbir Singh @ Sukha, Lakhbir Singh @ Lakha and Harbans Singh @ Bansa,

Notice in the application.

Mr. Sonpreet Brar, Advocate, accepts notice on behalf of the nonapplicant/petitioner and fairly does not oppose the application, which is consequently allowed and the aforesaid charge-sheets are ordered to be taken on record as Annexures R-49 and R-48 respectively, with the reply already filed on behalf of the respondent-Bureau.

CRM-M-25320-2020

As regards the prayer in this petition that the petitioner be admitted to bail, this court has already in previous orders made its view amply clear (prima facie even though for the purpose of this petition), that on the merits of it, I would not find ground enough to admit the petitioner to bail in the face of Section 37 of the NDPS Act, 1985, the allegation against the petitioner (as of now borrowed from the charge-sheet as has been taken on record), being that he in collusion with his co-accused was buying/selling opium of commercial quantity.

Obviously, whether or not that charge is eventually proved or not would be gone into by the trial court wholly on the basis of evidence led before it. Learned senior counsel has also submitted that even as per the case of the prosecution, the petitioner was only in conversation with Sukhbir Singh @ Sukha with regard to the potential sale or purchase of opium, though even that allegation is (obviously) denied by the petitioner, and in any case no such sale from him ever having been proved.

Even so, with the petitioners' voice sample now having been taken, for the purpose of this petition alone, this court, on the merits of it, is not convinced that the

conversation was not referring to a prospective sale/purchase of opium, naturally subject to that being proved before the trial court, or disproved. Hence, in terms of Section 37 of the NDPS Act, on that ground, I would not find any reason to admit the petitioner to bail.

Having said that, admittedly the petitioner is in custody for the past 1 year and 8 months, with the trial still to effectively commence, with the first prosecution witness still to be examined.

Consequently, learned counsel for the respondent-Bureau would address arguments as to why the petitioner should not be admitted to at least interim bail by this court in terms of the ratio of the judgment of the Supreme Court in **Union of India Vs. K.A.Najeeb** (Criminal Appeal no.98 of 2021), wherein it has been held that even in the face of provisions such as Section 37 of the NDPS Act, where an accused is in custody for long, with the trial not anywhere near conclusion, he should normally be admitted to bail.

It is to be noticed that the said petition/appeal before the Supreme Court was in the context of an offence punishable under the Unlawful Activities (Prevention) Act, 1967; however, specific reference was also made by the Apex Court to the NDPS Act and other

such statutes containing such like statutory provisions (to the effect that unless the court itself expresses a doubt over the involvement of any accused in a particular offence, he should not be admitted to bail).

Yet, as already noticed, the Supreme Court held that where the trial is taking long and an accused has also been in custody for long, he should normally be admitted to bail.

Learned counsel for the respondent-Bureau has cited various judgments today of the Supreme Court as follows:-

1. Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan (Criminal Appeal No.1043 of 2021 arising out of SLP (Crl.) No.1771 of 2021.

2. Union of India Vs. Rattan Mallik alias Habul (2009) 2 Supreme Court Cases 624.

3. State of Kerala etc. Vs. Rajesh Etc. (Criminal Appeal No(s).154-157 of 2020 arising out of SLP (Crl.) No(s).7309-7312 of 2019.

4. The State (GNCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha (Criminal Appeal No.257 of 2021 arising out of SLP (Crl.) No.670 of 2021.

He would again go through the judgments and assist this court as to whether the judgment in Union of India Vs. K.A Najeeb has been considered by their lordships and if not, the effect thereof.

Adjourned to 01.10.2021.

To be shown in the urgent motion list.”

Today, Mr. Sharma, learned counsel for the respondent Bureau, points out that even in terms of the judgment of the Supreme Court in the case of Union of India v. K.A. Najeeb (Crl. Appeal no.98 of 2021, decided on 01.02.2021), it was observed by the Supreme Court in para 20 as follows:-

“20. Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43D(5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent Court needs to be satisfied that prima facie the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such precondition under the UAPA. Instead, Section 43D (5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or chance of the accused evading the trial by

absconsion etc.” (sic)

This Bench at the outset is to observe that in other such like petitions (in the context of granting bail on account of long custody in cases falling under the provisions of the Act of 1985), I have admitted accused to bail on account of such long custody, in view of what is held in paragraph 13 of the said judgment, which reads as follows:-

“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) 7, Babba alias Shankar Raghuman Rohida v. State of Maharashtra and Umarmia alias Mamumia v. State of Gujarat 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.”

Correctly, I should have also gone through the judgment in more detail and seen that in fact the Supreme Court has stated thereafter in paragraph 20 that the bar contained in Section 37

of the Act of 1985 is more stringent than the bar contained in Section 43D(5) of the UAPA Act, 1967, inasmuch as Section 37 of the Act of 1985 stipulates that a court needs to be satisfied at least *prima facie*, that the accused is not guilty of the commission of the offence in question and that he is unlikely to commit another offence while on bail, whereas no such precondition has been imposed in the Act of 1967.

In response to the aforesaid contention of the learned counsel for the respondent Bureau, Mr. Bedi, learned senior counsel appearing for the petitioner, reiterates what he has argued on various dates prior also (as duly recorded in those orders), to the effect that the petitioner cannot be even accused of having committed an offence of trafficking in the contraband in question, with absolutely no recovery made from him and the only allegation against him being based on the telephonic conversation between him and the convicted accused, i.e. Sukhbir Singh, with that accused however having been convicted only for the commission of an offence punishable under Section 18(b) of the Act of 1985 and having been acquitted of the charges framed against him under Sections 27A and 29 etc. of the said Act.

He also reiterates that another accused charged of the same offence as the petitioner presently has, has already been acquitted, i.e. Harbans Singh alias Bansa and therefore even

though the respondent Bureau may be in appeal against the judgments in both those cases, presently there is nothing to be held against the petitioner, except the telephonic conversation, with the petitioner throughout submitting that it was not in the context of opium and the terminology used therein, i.e. of “Naya and Purana” and “80/85” was also not at all in that context (with him actually denying the conversation itself).

He again reiterates that the conversation of accused Harbans Singh @ Bansa with the convicted accused Sukhbir Singh also having been in the same context, and he having been acquitted; and yet further, this very Bench having already admitted a co-accused Gurmeet Singh to bail, there would be no reason to deny the petitioner the same concession in the entire circumstances of the case.

Upon query, he submits that he is not relying upon the judgment of the Supreme Court in **K.A. Nazebs’** case (supra) at all.

As already observed in the last order, this court may have been inclined to admit the petitioner to at least interim bail, in view of the fact that he has been in custody for one year and eight months, with the trial still not having effectively commenced at all, (but now with learned counsel for the respondent having pointed to paragraph 20 of the aforesaid judgment), learned senior counsel appearing for the petitioner

has again referred to the judgment placed on record by him as Annexure P-9 with the petition, i.e. of a Division Bench of this court in **Dharamveer and another v. State of Punjab**, (CRM-M-25433 of 2015, decided on 07.10.2015).

In that case, upon secret information having been received that the accused Tarsem Singh and one Dalbir Singh were dealing in the sale of heroin and were going to supply it at a particular place, the said persons had been apprehended by a police party, with 500 grams of heroin stated to have been recovered from each of them.

The aforesaid Tarsem Singh was alleged to have disclosed that Sandeep Singh and Dharamveer (petitioners therein) were at that time present near a particular place, with Rs.70,000/- for the purchase of the said heroin, and on the basis of that disclosure statement, the petitioners therein were also arrested, they having been found to be Head Constables in the Punjab Police.

Eventually, a report under Section 173 of the Cr.P.C. was submitted in their case.

The Division Bench held that there being no allegation that the petitioners used to purchase heroin for further supply or re-sale etc. “as members of any gang”, with there being no other case registered against them under the provisions of the NDPS Act and that all the prosecution witnesses in that case

being police officials and thereby there being no likelihood of the accused tampering with the evidence, they were ordered to be admitted to bail.

Learned senior counsel again reiterates that in the present case the only evidence is the alleged telephonic conversation between the petitioner and Sukhbir Singh and there would be no link evidence whatsoever, even in the form of a disclosure statement (other than the statement allegedly made under Section 67 of the Act of 1985, which he submits is no longer admissible in terms of the judgment of the Supreme Court in the case of Toofan Singh v. State of Rajasthan), with the allegation against the petitioner even then only being that he was to purchase only 750 grams of opium; and therefore there would be no reason to deny the petitioner the concession of bail even in terms of Section 37(1) (b) (ii) of the Act of 1985.

Keeping in view his argument, again though of course I am still not convinced (for the purpose of this petition alone), that the conversation recorded between the petitioner and Sukhbir Singh (with the voice of the petitioner having been stated to be verified by the Forensic Science Laboratory), was not in the context of the sale and purchase of opium, keeping in view the entire circumstances given hereinabove, as also the period of custody of the petitioner and the stage of the trial, he is ordered to be admitted to interim bail upon his furnishing

adequate bail and surety bonds to the complete satisfaction of the trial court, till the next date of hearing before this court.

Adjourned 11.01.2022.”

Thereafter the matter had been adjourned on 3 to 4 occasions, with the interim order continued; and on 22.2.2022 the following order had been passed:-

“Case heard by video conferencing.

The issue remaining in this petition as regards grant of bail to the petitioner being whether on the basis of the conversation recorded by the investigating agency between the petitioner and his co-accused, he is to be denied bail in terms of Section 37 of the NDPS Act, 1985, counsel for the parties would address arguments on the basis of the judgments of the Supreme Court in **Bharat Chaudhary vs. Union of India** (SLP (Crl.) no. 5703 of 2021, decided on 13.12.2021), and **State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and another**. Adjourned to 04.03.2022.

Learned counsel for the NCB has relied upon a judgement of this court (co-ordinate bench) in **Amit Khurana vs. State of Haryana** (CRM-M46238-2021).

Naturally, learned counsel for the parties would go through the judgments cited on both sides and address arguments thereafter on the next date of hearing.

Interim order to continue till the next date of hearing

only and specifically.

To be taken up as the second case of the day.”

Today, learned counsel for the petitioner again attempts to argue the matter on merits, to the effect that the conversation of the petitioner as recorded by the respondent-Bureau, not having specifically referred to any particular contraband, it cannot be taken to be in the context of opium with no such recovery made from the petitioner.

In that context, he specifically refers to the judgment of the Supreme Court in Pallulabid Ahmad Arimuttas' case (supra).

He next submits that though the petitioners' voice recording has been verified by the Forensic Science Laboratory to be actually his voice (though still denied by the petitioner), there is no such finding as regards the voice of the person the petitioner was alleged to be speaking with, i.e. Sukhbir Singh, from whom opium is alleged to have been recovered (and with that person actually convicted for the possession of opium, though he is in appeal before a Division Bench of this court).

Learned counsel for the petitioner also points to the order passed by the Supreme Court in the case of Bharat Chaudhary (supra), as also to another order of the Supreme Court in Rakesh Kumar Rathore versus Union of India [SLP (Crl.) no.4759 of 2021], dated 17.12.2021, wherein on the ground that the petitioner therein had been in custody for about 1 year and 8 months, with the trial not likely to conclude in near future, he had been admitted to bail by the Apex Court.

Per contra, learned Senior Standing Counsel for the

respondent-Bureau submits that the petitioner having been earlier declared to be a proclaimed offender in the context of the present complaint itself instituted by the Bureau, and though of course the trial has not recommenced in view of the fact that two co-accused of him are absconding (but with learned counsel for the petitioner submitting that in fact it is also for the reason that the voice recording samples are not being given by co-accused Gurmeet Singh and Labh Singh), and therefore the interim order passed by this court deserves to be vacated, he also submits that the factum of the petitioner being a proclaimed offender had not been noticed in order dated 1.10.2021, though it was noticed in previous orders passed.

He has also submitted that the petitioner was assisted by his associates in escaping from the custody of the Bureau when he was taken to court.

Having considered the matter, though a co-accused of the petitioner has possibly been erroneously admitted to bail by this court (this very bench), i.e. Gurmeet Singh, yet, in view of the last aforesaid fact that learned counsel for the respondent-Bureau has brought to my notice again today, I agree with him and consequently I find no further ground to entertain this petition which is consequently dismissed, with the interim order dated 1.10.2021 vacated.

It is to be observed again (as recorded in the order dated 1.10.2021), that as regards the conversation between the petitioner and Sukhbir Singh not being related to opium but to some other product (not specified by the petitioner), I am not at all convinced with that argument and

therefore as regards admitting the petitioner to bail even in terms of Section 37(1)(b)(ii) of the NDPS Act, 1985, it cannot be done.

The petitioner had therefore been admitted to interim bail, firstly, on account of the fact that he had been in custody for a long time, with his co-accused having been admitted to bail, and further, with the judgment of a Division Bench of this court having been cited in the case of **Dharamveer** (supra).

In the context of that case, it had been observed that the Division Bench had admitted an accused to bail on the ground that he was only alleged to have agreed to purchase 750 grams of opium and had not actually purchased it and that no contraband had been recovered from him.

Though obviously in the present case also no contraband has been recovered from the petitioner, yet, it is again reiterated that the recorded conversation as has been obtained by the respondent, having referred to rates of a product and having referred to an “old product” and a “new product”, and with the petitioners' voice sample having been matched with the said recorded conversation with Sukhbir Singh (from whom opium was actually recovered), and the petitioner never having specified as to what other product he was talking about, despite queries, in my opinion the ratio of the judgment in **Dharamveers'** case (supra) would not apply.

As regards **Pallulabids'** case (supra), no specific conversation seems to have been produced before the Supreme Court with only calls seemingly having been exchanged between some of the accused and the person apprehended with contraband; whereas in the present case, the actual

telephone conversation between the petitioner and Sukhbir Singh having been recorded, referring to rates of an 'old' and a 'new' product, have been obtained by the respondent-Bureau, as already noticed hereinabove.

Hence, with the petitioner also having had a reprieve of more than 5 months after a 'longish' period of custody, I would see no ground to make the interim order passed in his favour absolute.

Therefore, with this petition dismissed and the interim order vacated, the petitioner would surrender before the learned trial court within 10 days from today.

7.3.2022
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No