

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

CRM-M-40635-2021
Date of decision: 06.04.2022

Sujjan Singh @ Sonu

...Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

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

Mr. Surender Singh, AAG, Haryana.

HARNARESH SINGH GILL, J.

Having been named and arrested as one of the accused in FIR No.508 dated 30.10.2020 registered under Sections 15, 20 and 29 of the NDPS Act, at Police Station Thanesar Sadar, District Kurukshetra, the petitioner prays for grant of regular bail.

Additional status report filed by way of an affidavit dated 30.03.2022 of Deputy Superintendent of Police, Kurukshetra, is taken on record.

Learned counsel for the petitioner submits that the petitioner was not named in the FIR and rather indicted on the basis of the disclosure statements of co-accused, namely, Sandeep Kumar and Roshan; that the petitioner does not know the co-accused and is not related to them in any manner; that no recovery was effected from the petitioner and that even post arrest, the statement so recorded of the petitioner under Section 27 of the Evidence Act, is inadmissible and cannot be used to inculcate the petitioner; that there being no material on record to link the petitioner with the co-accused, the prosecution

version that the petitioner was supplier of the substance, is highly suspect; that as a matter of fact, the petitioner is a case of mistaken identity and that no recovery having been effected from the petitioner, the rigours of Section 37 of the NDPS Act, would not be applicable.

In support of his arguments, learned counsel, would place reliance upon the judgment of the Hon'ble Apex Court in Bharat Chaudhary Vs. Union of India, 2022(1) RCR (Criminal) 490. Specific emphasis has been laid on para 10 of the said judgment, which would read as under:-

“10. After carefully examining the arguments advanced by learned counsel for the parties and having cursorily glanced at the records, we are of the opinion that the impugned order cancelling the bail granted in favour of Bharat Chaudhary [A-4], is not sustainable in view of the fact that the records sought to be relied upon by the prosecution show that one test report dated 6th December, 2019, two test reports dated 17th December, 2019 and one test report dated 21st December, 2019 in respect of the sample pills/tablets drawn and sent for testing by the prosecuting agency conclude with a note appended by the Assistant Commercial Examiner at the foot of the reports stating that “quantitative analysis of the samples could not be carried out for want of facilities”. In the absence of any clarity so far on the quantitative analysis of the samples, the prosecution cannot be heard to state at this preliminary stage that the petitioners have been found to be in possession of commercial quantity of psychotropic substance as contemplated under the NDPS Act. Further, a large number of the tablets that have been seized by the DRI admittedly contain herbs/medicines meant to enhance male potency and they do not attract the provisions of the NDPS Act. Most importantly, none of the tablets were seized by the prosecution during the course of the search conducted, either at the office or at the residence of A-4 at Jaipur, on 16th March, 2020. Reliance on printouts of Whatsapp messages downloaded from the mobile phone and devices seized

from the office premises of A-4 cannot be treated at this stage as sufficient material to establish a live link between him and A-1 to A-3, when even as per the prosecution, scientific reports in respect of the said devices is still awaited.”

Reference is also made to another judgment of the Hon’ble Supreme Court in Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954.

Still further, learned counsel for the petitioner places reliance upon a Coordinate Bench judgment of this Court in Buta Singh Vs. State of Punjab, 2020(2) RCR(Criminal) 595, drawing support from the observation made in para No. 8 therein, which reads as under:-

“8. In the present case the petitioner has been implicated on the basis of disclosure statement of co-accused Darshan Dass @ Ali and there is no other material/evidence connecting him with his co-accused and the narcotic substances recovered. In the earlier case also which is pending, the petitioner was implicated on the basis of disclosure statement. The petitioner was not arrested from the spot and no recovery was made from him. The rigors of Section 37 (1)(b) of the NDPS Act are not applicable qua the petitioner and in any case the same stand satisfied by due implication. Keeping in view the facts and 2 of 3 circumstances of the case, nature of accusation against the petitioner, kind of evidence available against him and also the fact that the trial against him is likely to take long time but without commenting on merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.”

On the other hand, learned State counsel, while referring to the additional status report filed contends that the petitioner is a habitual offender and a person of criminal antecedents, inasmuch as, two other criminal cases i.e. one under the NDPS

and another under the IPC stand already registered against the petitioner; that the petitioner had been in contact with the co-accused through Whatsapp chat. He refers to para No. 7 of the additional status report, which would read as under:-

“7. That the present petitioner/accused is habitual offender and the Haryana Police declared reward of Rs.25,000/- on the present petitioner/accused vide letter No. 3671/CR-4 dated 25.02.2021. The Police visited so many time the houses of Pawan Rana son of Krishan Lal resident of G-105, Ansal Town Karnal, District Karnal and Nepal son of Ranjit Singh resident of Dagah, District Jhalawada, Rajasthan vide DD No.13 dated 13.03.2022, DD No.08 dated 19.03.2022 and DD No. 08 dated 20.03.2022. the above named persons were not found at their residences and notices were also issued in their names by the Police and same were given to Security Guard, namely, Jaspal son of Devi Singh, Security Guard, Ansal City, Karnal.”

The learned State counsel would, thus, submit that the petitioner being a person of criminal antecedents and having actively participated in the crime, is not entitled to the concession of regular bail. It is further submitted that taking into consideration the said vital part, if released on bail, the petitioner would again involve himself in similar other crimes.

Having heard learned counsel for the parties, I find no merit in the present petition and the same is liable to be dismissed.

The FIR in this case was registered on 30.10.2020. The petitioner has been in custody since 2.8.2021. The recovery effected in the present case is of 1 quintal 34 kg poppy straws and 34 kg Gaanja (Cannabis). As per the prosecution, the petitioner has been found to have participated in the commission of crime with the co-accused.

The argument of the learned counsel for the petitioner to release him on bail due to custodial period, is not worth consideration, in view of the order dated 29.10.2021 of the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 5507/2020 – Jamshed Alam @ Jamshere Alams Vs. The State of Jharkhand, wherein the accused was granted bail after custody period of more than 3 years.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

06.04.2022
ds

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No