

218 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37035-2022
Date of Decision: 26.08.2022

PARSHANT ... PETITIONER
V/S

STATE OF HARYANA ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Pawan Attri, Advocate for the petitioner.

Mr. Zorawar Singh Chauhan, DAG Haryana.

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VIVEK PURI, J. (ORAL)

Petitioner is seeking regular bail in case bearing FIR No. 397 dated 02.10.2019 under Section 22 of NDPS Act, registered at Police Station Urban Estate, Rohtak.

Custody certificate has been placed on record.

Briefly, the allegations against the petitioner are with regard to recovery of 125 viles of Wincirex containing codeine.

Learned counsel for the petitioner contends that the petitioner is in custody for a period of 2 years, 10 months and 23 days and only 2 witnesses remained to be examined and the prosecution has not yet concluded the evidence. Even, as per the order of Hon'ble Supreme Court of India dated 04.03.2022, the SLP has been dismissed but trial Court has been directed to expedite the trial but the trial is getting delayed.

At the earlier instance, the petitioner had preferred the regular

bail application bearing CRM-M-9135-2021 and the same has been

dismissed in terms of the order dated 04.03.2021 and the following order was passed:-

“Through instant petition, the petitioner is seeking regular bail in case bearing FIR No. 397 dated 02.10.2019 under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity 'the Act') registered at Police Station Urban Estate, District Rohtak (Haryana).

Briefly, the allegations against the petitioner are with regard to the recovery of 125 vials of winerex containing codeine.

It has been argued by learned counsel for the petitioner that the petitioner is in custody for the last one year and five months and the trial is not progressing due to COVID-19 Pandemic.

On the contrary, it has been pointed out by learned State counsel that the weight of contraband recovered from the conscious possession of the petitioner is to the extent of 12.50 Kg. which falls in the category of commercial quantity.

In the judgment dated 24.01.2020 rendered by Hon'ble the Supreme Court in State of Kerala etc. vs. Rajesh etc., 2020 (1) R.C.R (Criminal) 818, it has been observed that liberal approach in granting the bail in the cases under the NDPS Act is uncalled for. Furthermore, the twin conditions, as laid down under Section 37 of the NDPS Act must be satisfied before extending the concession of bail. In the aforesaid decision, it has been laid down as following:-

“18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:-

“37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an

opportunity to oppose the application for such release, and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail.

(emphasis supplied)

20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

A perusal of the above makes it abundantly clear that the accused cannot be released on bail unless the material on record indicates that there are reasonable grounds for believing that he is not guilty of such offence; and he is not likely to commit any offence while on bail. It has been further observed that the expression “reasonable grounds” means something more than prima facie grounds.

In the case in hand, the weight of contraband falls in the category of commercial quantity. Moreover, long incarceration cannot be termed to be a circumstance to extend the concession of bail particularly because the Courts were on restricted mode of hearing due to Covid-19 Pandemic.

There is nothing to suggest that petitioner has not committed the offence and is not likely to commit the offence while on bail.

Keeping in view the totality of circumstances, no justified ground is made out to extend the concession of regular bail to the petitioner.

Dismissed.”

The petitioner had assailed the said order in the Supreme Court
of India and in terms of the order dated 04.03.2022 passed in SLP No. 5614

of 2021, it was observed that no ground for interference is made out and the petition was dismissed. However, the trial Court was directed to expedite the trial.

Learned counsel for the petitioner contends that the trial is not expeditiously proceeding. However, learned State counsel submits that two witnesses namely ASI Rajeev Kumar and SI Joginder remain to be examined. It has also been pointed out that order dated 02.08.2022 passed by the learned trial Court indicates that 3 witnesses namely Constable Jitender, DSP Sajjan and ASI Kuldeep were present and examined. Another PW SI Joginder was present and partly cross-examined. His further cross-examination was deferred on the request of the learned defence counsel as Court time was over. Another PW ASI Rajiv Kumar was also present. As it was an old case, learned defence counsel was given an option that he may cross-examine the witnesses present even if the Court time is over but the learned defence counsel declined the offer and opted not to cross-examine on the score that Court time is over. On that score ASI Rajiv Kumar and SI Joginder Kumar were discharged and were bound on for 02.09.2022.

In these set of circumstances, it cannot be said that there is any lapse on the part of the trial Court for expeditious disposal of the case particularly, because on the previous date of hearing three witnesses were completely examined. The statement of one of the witnesses was partly examined. The learned Presiding Officer had given an option to the learned defence counsel to cross-examine and further examine the two witnesses who were in attendance but the he declined the offer on the score that Court time is over. Consequently, it cannot be said that the learned trial

Court is not making sincere endeavour for expeditious disposal of

the case. As such, no ground is made out to extend the concession of bail to the petitioner.

Dismissed.

26.08.2022

Janki

**(VIVEK PURI)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No