

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44810-2021 (O & M)
Date of decision:10.05.2022

Surender Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ramesh Kumar Bamal, Advocate,
for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

This is the second petition under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in a case bearing FIR No.35 dated 04.02.2020 under Section 15 (Act No.61) of the Narcotic Drugs & Psychotropic Substances Act, 1985 with Police Station Jind Sadar, District Jind.

2. The brief facts of the case are that the police party received a secret information that the petitioner, who is a truck driver in a company at Rampura, Gurgaon goes to Chennai after loading Maruti cars in the company vehicle. He loads Hyundai company cars from Chennai and comes to Punjab. He was driving a vehicle No.NL-01AD-3910 from Chennai in which poppy husk is loaded and if a *nakabandi* was done, huge quantity of poppy husk could be recovered.

3. Based on the said information, a *nakabandi* took place and the container truck driven by the petitioner was stopped and from the same, recovery of 150 Kgs. poppy husk was effected. The petitioner was arrested and the investigation was completed. Pursuant thereto, the petitioner sought the concession of regular bail from the Trial Court, which was declined vide order dated 20.07.2020. Thereafter, he approached this Court vide CRM-M-28721-2020 and the same was dismissed vide order dated 19.10.2020 (Annexure P-8).

4. After the dismissal of the bail application by this Court, the petitioner approached the Hon'ble Supreme Court by way of Special Leave to Appeal (Crl.) No.1601 of 2021 and the Hon'ble Supreme Court passed the following order on 15.04.2021 (Annexure P-9):-

“We are not inclined to interfere with the judgment and order passed by the High Court. The Special Leave Petition is dismissed.

Needless to state that the police is bound to comply the order of the Additional Sessions judge, Jind dated 19th February, 2020 allowing the petitioner's application for supply of CCTV footage to him, unless the order of the Additional Sessions Judge has been set aside in appeal.

Needless to state that any further application for bail will then naturally be a fresh cause of action for which the petitioner, if so advised, may move before the concerned trial Court”.

5. Based on the observations of the Hon'ble Supreme Court in order dated 15.04.2021 (Annexure P-9), the petitioner once again approached the Trial Court and the bail was declined once again vide order dated 06.10.2011 (Annexure P-11).

6. Pursuant to the dismissal of the bail application by the Trial Court, the petitioner has filed the present bail application.

7. The learned counsel for the petitioner submits that he was illegally taken into custody from Ashirwad Hotel, Kotputli (Rajasthan) whereas he is shown to have been arrested from Jind by-pass.

An application was moved by the petitioner to the concerned Court for the issuance of directions to the Manager/Owner of the Ashirwad Hotel, Kotputli (Rajasthan) to provide the CCTV footages dated 04.02.2020 between about 3.30 to 5.30 a.m. as well as directing the Incharge/Manager/responsible person of Toll Centre Dhigal, Rewari, District Rewari (Haryana) as well as Sanjahanpur (Rajasthan) also to provide the necessary CCTV footage.

In terms of the aforesaid application, an order dated 19.02.2020 (Annexure P-1) was passed whereby the Incharge of the Ashirwad Hotel, and the Managers of the crossed Toll Centre Dhigal Rewari, District Rewari (Haryana) were directed to save the CCTV footages and supply the same alongwith the certificate under Section 65B of the Indian Evidence Act to the petitioner. He contends that because of the non-supply of the same, the petitioner had moved two other applications (Annexures P-2 and P-3) before the Trial Court but the said applications have not been decided till date. The zimni orders in this regard were attached as Annexure P-4 to P-7. He, thus, contends that the Hon'ble Supreme Court had given him the liberty to approach the Trial Court once again and having approached the Trial Court and having filed the bail application, the Trial Court did not consider his bail application in the correct perspective. Despite his custody of more than 02

years, none of the cited witnesses had been examined till date and this fact itself would entitle the petitioner to the grant of bail. He refers to the judgments in “*Chitta Biswas alias Subhas versus The State of West Bengal, (Criminal Appeal No(s). 245/2020 (@ SLP (Crl.) No.8823/2019 and “Jorawar Singh versus State of Punjab, (CRM-M-906-2020 decided on 14.01.2021)”*”, to contend that after a reasonable period of custody is undergone and the trial is not making progress, then the Court can consider grant of regular bail. However, it is admitted that the CCTV footage has not been supplied till date.

8. The learned counsel for the State, on the other hand, submits that there is no change in circumstances after the first bail application of the petitioner was dismissed other than the further period of custody undergone by the petitioner. The CCTV footages had not been handed over to the petitioner as the same had been destroyed by some specific period of time as per norms. As per his disclosure statement, he had purchased the contraband from Mahender, resident of Mandisor (Madhya Pardesh) for a sum of Rs.2,50,000/- to be sold in Punjab at a profit. The recovery, in the present case, was of 150 Kgs. of poppy husk i.e. three times of the commercial quantity of 50 Kgs. and the rigors of Section 37 would apply to the facts of the present case because it cannot be said that the petitioner has not committed the offence, in question, and is not likely to commit one in the future.

9. I have heard the learned counsel for both the parties at length. There is no change in circumstances other than the further period of investigation. The CCTV footage is not available to substantiate the defence

version of the petitioner that he was arrested from elsewhere. The judgments in *Chitta Biswas alias Subhas (supra)* and *Jorawar Singh (supra)* would not be applicable to the case of the petitioner because as has already been submitted hereinabove, the recovery from the petitioner is of three times the commercial quantity of the contraband. However, the trial is certainly being delayed as 14 prosecution witnesses are to be examined and none of them have been examined till date and the petitioner has been in custody for the last more than 02 years.

10. Therefore, I deem it appropriate to direct the Trial Court to conclude the trial within a period of six months from the next date fixed before it. In case, the trial does not conclude within the said period, the petitioner shall be at liberty to apply for bail once again.

11. In view of the above, the present petition is disposed of with the observations as aforesaid.

(JASJIT SINGH BEDI)
JUDGE

May 10, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No