

Neutral Citation No.2023:PHHC:072582

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

Reserved on : 17.05.2023
Pronounced on : 18.05.2023

CRM-M-6808-2022

Sham Lal

Petitioner

V/S

Union of India through Narcotics Control Bureau, Chandigarh Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Suram Singh Rana, Advocate
for the petitioner.

Mr. Rajiv Sharma, Advocate
for the respondent-NCB.

ASHOK KUMAR VERMA, J.

1. The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.55 dated 29.08.2021 registered under Sections 8, 20, 25, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station NCB, CZU, Chandigarh.

2. Brief facts of the case are that on 29.08.2021 a secret information was received by Gurpreet Singh, Surveillance Assistant, NCB that accused Ravi Vijay and Digvijay Singh Shekhawat were travelling from Himachal Pradesh through Tax Barrier Ghanauli Ropar with Charas and were going towards Rajasthan. On the basis of the said information, a team of NCB, Chandigarh apprehended accused Ravi Vijay and Digvijay Singh Shekhawat, while they were travelling in a car

bearing registration No.CH-01-AH-0640, at Ghanauli Tax Barrier, Rupnagar and on conducting search, 1.550 kgs of Charas was recovered from their car. During investigation, the above-said accused named the present petitioner as supplier of the contraband recovered from them.

3. Learned counsel for petitioner submits that the petitioner was not named in the FIR and has been falsely implicated in the present case on the basis of disclosure statements of co-accused which is a very weak type of evidence. The petitioner was not apprehended on the spot. Nothing has been recovered from him. The petitioner is running a Home Stay at Himachal Pradesh for which the Department of Tourism and Civil Aviation, Government of Himachal Pradesh has issued certificate to the petitioner for running the home stay. The co-accused got the number of the petitioner for booking his Home Stay in future. The petitioner has nothing to do with the co-accused and the alleged contraband recovered from them. Even the petitioner also joined the investigation with the NCB team, when they conducted raid at house of the petitioner on 30.08.2021 and nothing was recovered. The petitioner is not involved in any other case. The petitioner is in custody since 01.09.2021. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be released on regular bail. In support of his arguments learned counsel for the petitioner has placed reliance upon the judgments passed by *Hon'ble Supreme Court in Union of India Vs. Bal Mukund and others : 2009(2) RCR (Criminal) 574; State by*

(NCB) Bangaluru Vs. Pallulabid Ahmad Arimutta and another : 2022(1) RCR (Criminal) 762; SLP (Crl.) No.4173-2022 titled as 'Shariful Islam @ Sarif Vs. The State of West Bengal' dated 04.08.2022 and the judgments passed by this Court in CRM-M-12997-2020 titled as 'Daljit Singh Vs. State of Haryana' decided on 16.07.2021 and CRM-M-39657-2020 titled as 'Vikrant Singh Vs. State of Punjab' decided on 06.04.2022.

4. Per contra, learned counsel for the respondent-NCB has vehemently opposed the present petition in terms of reply filed by the respondent-NCB and submits that huge quantity of 1.550 kg Charas was recovered from the co-accused, which falls in the category of commercial quantity. In their disclosure statements co-accused named the petitioner as supplier of the alleged contraband recovered from them. The call details record of the petitioner and co-accused also shows link between them. Therefore, the present petition may be dismissed.

5. I have heard learned counsel for the parties and gone through the paper-book.

6. As per reply filed by the respondent-NCB, in his statement under Section 67 of the NDPS Act, petitioner-Shaym Lal had admitted the manner and factum of the delivery of Charas by him to co-accused Ravi Vijay and Digvijay Singh Shekhawat on 27.08.2021. He also disclosed that he used to cultivate Charas and provide it to the tourists according to their demand and he had close link with co-accused Ravi Vijay and had supplied seized Charas to Ravi Vijay against payment of

Rs.3,00,000/-. On the basis of his statement under Section 67 of the NDPS Act, the petitioner was arrested on 01.09.2021. Chemical Examination Report dated 01.09.2021 from the CRCL, New Delhi was received on 23.12.2021 which also confirmed the presence of Charas in the sample. During remand, the petitioner has disclosed about the mobile numbers used by him to communicate with Ravi Vijay as 8894479430 and 7876926021 and the mobile numbers used by Ravi Vijay to communicate with him as 9166077507 and 9828154507. The locations of mobiles of co-accused Ravi Vijay and Digvijay Singh also reveal that they were coming from Rajasthan and were in Himachal Pradesh from 26.08.2021 till 29.08.2021. During this period petitioner-Shaym Lal was also in Himachal Pradesh. The CDRs also reveal inter se contact between the accused. The mobile phones recovered during the investigation have been sent to CFSL, Chandigarh for analysis through Amit Kumar, Sepoy.

7. Accused Ravi Vijay and Digvijay Singh Shekhawat had conspired with petitioner-Shyam Lal for trafficking seized 1.550 kgs Charas which falls in the category of commercial quantity and the same was supplied by petitioner-Shyam Lal to co-accused Ravi Vijay and Digvijay Singh Shekhawat which was later recovered from their conscious possession when they carry the same from Himachal Pradesh to Punjab without any license or authorization. The provisions regarding conspiracy, transportation interstate and conscious possession have been contravened the provisions of Section 8 of the NDPS Act and which is

punishable under Sections 20 and 29 of the NDPS Act. The seized vehicle bearing registration No.CH-01-AH-0640 is liable for confiscation under Section 60 of the NDPS Act. The guilty of the accused persons would be established by the oral testimony of the witnesses, the case property, documents and the report of Chemical Examiner. The present complaint is being filed against co-accused Ravi Vijay, Digvijay Singh Shekhawat and petitioner-Shyam Lal. Further investigation regarding other links behind trafficking of illicit Charas is going on. Investigation to identify and join into investigation of other known and unknown persons including Akshay/Pawan Kumar, Himanshu Chaudhary and Hitesh Bansal is also going on and their role in the present dealing of contraband along with other similar dealings is also being investigated.

8. The act of the present petitioner is nefarious and detrimental to the interest of society as the petitioner with co-accused are involved in the violation of the provisions of the NDPS Act. If the bail is granted to the petitioner, then he may tamper and influence the witnesses.

9. Hon'ble Supreme Court had laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under the NDPS Act. In ***Union of India Vs. Ram Samujh and others : 1999(9) SCC 429***, it has been elaborated as under :-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should

*be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable: it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didien v. Chief Secretary., Union Territory of Goa. (1990) 1 SCC 95** as under:*

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine,"

8. To check the menace of dangerous drugs flooding the market, the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in the dangerous drugs, the Court should implement the law in the

spirit with which the Parliament, after due deliberation, has amended.”

10. Similarly view was reiterated by Hon'ble the Supreme Court in ***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); Union of India Vs. Rattan Malik @ Habul : (2009) 2 SCC 624; State of Kerala Etc. Vs. Rajesh Etc. (Criminal Appeal No(s).154-157 of 2022 arising out of SLP (Crl.) No(s).7309-7312 of 2019); 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 and Union of India Vs. K.A. Najeeb (Criminal Appeal No.98 of 2021).***

11. The Hon'ble Supreme Court in case ***State of Punjab Vs. Baldev Singh : 1999 AIR SC 2378*** has also observed regarding Drug Addiction, Drug abuse and its effect on the society. The Hon'ble Apex Court in para No.3 has observed as under:-

“3. Drug abuse is a social malady. While drug addition eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Australia in 1988 was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified

this convention.”

12. The aforesaid ratio of law has also been reiterated by the Hon'ble Supreme Court recently in *Sri Thaha Ummer Vs. Union of India, Criminal Petition No.9450/2022 decided on 09.11.2022.*

13. The facts and circumstances of the judgments relied upon by learned counsel for the petitioners are quite distinguishable from the facts of the present case because every case has its own peculiar facts and circumstances. Therefore, no benefit of the same, whatsoever, can be given to the petitioner.

14. Keeping in view the facts and circumstances of the case, evidence against the petitioner, the fact that the alleged contraband recovered falls under the category of 'commercial' quantity which attracts rigors of Section 37(1)(b) of the NDPS Act, I am of the considered view that the petitioner does not deserve the concession of regular bail.

15. In view of the above, the present petition is dismissed.

16. Nothing said here-in-above shall be construed as an expression of opinion on the merits of the case.

18.05.2023

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No