

CRM-M-11003-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-11003-2023

Date of Decision : June 09, 2023

Beli Ram

.... Petitioner

vs.

Union of India

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. S. S. Rana, Advocate
with Mr. Arvind Sharma, Advocate
for the petitioner.

Ms. Gurmeet Kaur Gill, Senior Panel Counsel, UOI-NCB.

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GURBIR SINGH, J. :

1. Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in case FIR No.51 dated 04.08.2021, under Sections 8, 20, 28, 29, 60 & 61 of the NDPS Act, 1985, registered at Police Station NCB, Chandigarh.

2. The case in question was registered on the statement of Intelligence Officer of the Narcotics Control Bureau (NCB), Chandigarh stating that secret information was received that two persons namely Sher Singh and Beli Ram (petitioner) son of Kalu Ram aged about 25 years, both residents of Kullu (Himachal Pradesh) were bringing Charas from Kullu by concealing it in cartons of apples and pears (nashpati) in a Bolero pick-up bearing number HP-34-D-2598 and they would deliver this Charas to a person namely Happy in Patiala (Punjab) on 04.08.2021. Further, they

would pass Ghanauli Chowk between 10:30 AM to 11:30 AM on 04.08.2021. Smt. Neena Kakkar – Superintendent of NCB, Chandigarh and a Gazetted Officer constituted a team of NCB officers/officials headed by Ajit Pal Singh, Intelligence Officer (IO). The said team reached at the disclosed place in two departmental vehicles. The IO introduced himself and NCB team to Constable Lakhwinder Singh and Constable Gurpreet Singh, present at Police Check Post and told them about secret information available with them and requested them to remain present as witnesses. They both joined NCB team. At about 11:00 AM, one Bolero pick-up was found coming with registration number HP-34-D-2598. It was signalled to stop and driver accordingly stopped the vehicle. Two persons were found travelling in the said vehicle. IO Ajit Pal Singh introduced himself and NCB team to the said persons. On asking, the driver told his name as Sher Singh son of Jaylu Ram, resident of Kullu (HP) and the other person told his name as Beli Ram son of Kalu Ram, resident of Kullu (HP). The said persons were told about the secret information available with them and it was asked to them whether they were bringing any intoxicated substance or Charas in their vehicle in clandestine manner. Both the said persons told that they were having 5.5 kg of Charas contained in five packets, concealed in cardboard boxes of apples and pears in their Bolero pick-up bearing number HP-34-D-2598. Both the above-said persons unloaded the cardboard boxes one by one. They brought out five packets of Charas from their vehicle and produced the same before IO Ajit Pal Singh by telling that it was the Charas consignment brought from Kullu and they were going to deliver the same to

one Happy at Patiala. A small quantity of substance, obtained from all the packets, were tested with Drug Detection Kit brought by NCB team. On testing, the same showed positive for Charas. Charas in four packets was taken into possession in a parcel which was marked as LOT-A and charas from another packet was taken into possession in a separate bag and was marked as LOT-B, as per rules. Both the accused were issued notice under Section 67 of the NDPS Act and were also made to understand the legal provisions of Section 67 of the NDPS Act. The petitioner made voluntary statement and disclosed that on the offer of co-accused Sher Singh to transport Charas, he had agreed and brought his vehicle in which the contraband and fruits were loaded. Co-accused Sher Singh made statement that petitioner Beli Ram was his cousin brother and he was aware about the consignment of seized Charas. He was driving the vehicle and Sher Singh had promised him to pay Rs.20,000/- for that consignment.

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 04.08.2021 i.e. for the last 01 year and 10 months. He is not involved in any other case. The entire material of apple and pears, in which contraband was concealed, belonged to co-accused Sher Singh. The petitioner was concerned only with the transportation charges. It is further argued that there was no compliance of Section 50 of the NDPS Act. The petitioner is having three children i.e. one daughter aged 10 years and two sons aged 08 and 06 years. There is no other member in the family to provide them basic necessities and if the petitioner is ultimately acquitted, then his days spent in prison would not be restored.

4. Learned counsel for UOI-NCB has submitted that the petitioner was very well aware about the consignment of Charas concealed under the cartons of apples and pears. He has tendered his voluntary statement under Section 67 of the NDPS Act and has admitted the factum of said recovery. The petitioner has been actively involved in the trafficking of Charas and was actively involved in the smuggling of Charas from Kullu to Punjab. The call detail record of his mobile phone established his close connection with the co-accused. As per Custody Certificate dated 02.05.2023, the petitioner has only undergone 01 year 08 months and 25 days of the sentence awarded to him. The challan has already been presented. One prosecution witness has also been examined. She has further argued that keeping in view the gravity of offence and provisions of Section 37 of the NDPS Act, the petitioner does not deserve the concession of bail.

5. Learned counsel for the petitioner, in support of his contentions, has placed reliance on various judgments i.e. Hasanujjaman and others vs. The State of West Bengal – Special Leave to Appeal (Crl.) No.3221/2023, decided on 04.05.2023, Shariful Islam @ Sarif vs. The State of West Bengal – Special Leave to Appeal (Crl.) No.4173/2022, decided on 04.08.2022, Mohammad Salman Hanif Shaikh vs. The State of Gujarat – Special Leave to Appeal (Crl.) No.5530/2022, decided on 22.08.2022, by the Hon'ble Apex Court, Vikrant Singh vs. State of Punjab – CRM-M-39657-2020 (O&M), decided on 06.04.2022 by a Co-ordinate Bench of this Court, State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and another – 2022 (1) RCR (Criminal) 762, decided on 10.01.2022, Gurlal

Singh @ Gullu vs. State of Punjab – CRM-M-32387-2020 (O&M), decided on 28.07.2021 and State of Kerala vs. Raneef – 2011 (1) SCC 784, decided on 03.01.2011.

6. Heard.

7. The recovery in the instant case is 5.5 kg of Charas, concealed under the cartons of apples and pears in a Bolero pick-up bearing number HP-34-D-2598. The said vehicle is registered in the name of mother of the petitioner. The said vehicle was being driven by co-accused Sher Singh. The case was registered after receiving secret information which was sent to Smt. Neena Kakkar – Superintendent of NCB, Chandigarh and a gazetted Officer, who constituted a team of NCB officers/officials led by Ajit Pal Singh, Intelligence Officer (IO). There is call detail record showing that the petitioner and co-accused Sher Singh were connected to each other. Since recovery was effected from vehicle, concealed in the cartons of apples and pears, so, provisions of Section 50 of the NDPS Act are not prima facie attracted. Challan is already presented. No doubt, the trial is going at a slow pace as only one prosecution witness has yet been examined but provisions of Section 37 are attracted in the instant case. The delay in trial of a case is a ground for releasing a person on bail, but keeping in view the manner in which the instant recovery has been effected, the petitioner cannot be released on bail, at this stage.

8. In the case of Hasanujjaman (supra), there was recovery of 115 bottles of phensedyl. In Shariful Islam @ Sarif (supra), the Hon'ble Apex Court held that there was no likelihood of completion of trial in near

future. In Mohammad Salman Hanif Shaikh (supra), there was recovery of 358 bottles of cough syrup. In the case of Vikrant Singh (supra), it was argued that the petitioner has been implicated solely on the basis of disclosure statement made by the co-accused. In the caes of Pallulabid Ahmad Arimutta (supra), recovery was of 965 grams of Amphetamine and 30 grams of Cocaine. In the said case, the order granting bail to accused Mohmmmed Afzal by the High Court, was cancelled. The relvant extract of the said order is under :-

“11. However, the evidence brought before us against Mohammed Afzal [A-2], respondent in SLP (Crl.) No. 1569/2021, subject matter of the second case i.e., NCB Case FN No. 48/01/07/2019/BZU, who was granted bail vide order dated 08th January, 2020, will have to be treated on an entirely different footing. There are specific allegations levelled against the said respondent regarding recovery of substantial commercial quantities of drugs from a rented accommodation occupied by him pursuant to which he was arrested on 16th June, 2019. This aspect has been completely overlooked while passing the order dated 08th January, 2020 wherein, the only reason that appears to have weighed with the High Court for releasing him on bail is that his case stands on the same footing as A-1, A-3 and A-4 who had been enlarged on bail vide orders dated 11th October, 2019, 16th September, 2019 and 09th September, 2019, in connection with the second case registered by the

Department. We are of the firm view that A-2 cannot seek parity with the aforesaid co-accused and no such benefit could have been extended to him in view of Section 37 of the Act when he was found to be in conscious possession of commercial quantity of psychotropic substances, as contemplated under the NDPS Act. That being the position, the petitioner-NCB succeeds in SLP (Crl.) No. 1569/2021. The bail granted to the respondent-Mohammed Afzal [A-2] is cancelled forthwith at this stage and he is directed to surrender before the Sessions Court/Special Judge (NDPS) within a period of two weeks, for being taken into custody.”

In **Gurlal Singh @ Gullu** (*supra*), the Court found that the method adopted for sampling was not as per the prescribed procedure and the petitioner therein had already undergone sentence of 03 years and 04 months when the bail was granted and the case of **Raneef** (*supra*) was under the Unlawful Activities (Prevention) Act, 1967 and was not related to Section 37 of the NDPS Act. So, all the aforesaid authorities are distinguishable on facts and cannot be applied to the case in hand.

9. In the light of the above discussion and keeping in view provisions of Section 37 of the NDPS Act, I do not find it a fit case to grant concession of bail to the petitioner, at this stage.

10. Dismissed.

11. However, taking into consideration the custody period of the petitioner, learned Trial Court is directed not to grant any unnecessary

adjournments and conclude the trial of the case preferably within a period of six months. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

12. Pending applications, if any, shall stand disposed of along with this petition.

June 09, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.