

Neutral Citation No.2023:PHHC:130236
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11490 of 2023
Reserved on: 03.10.2023
Pronounced on: 07.10.2023

Bal Kishan @ Bala

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Bikramjeet Singh Jatana, Advocate for the petitioner.
Mr. Vipul Sherwal, AAG, Haryana.

DEEPAK GUPTA, J. (Oral)

By way of present petition filed under Section 439 Cr.P.C., petitioner has prayed for grant of regular bail in case FIR No.0148 dated 03.03.2022 registered under Sections 20(b)(ii) B of Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 20(b)(ii)C & Section 27 A of the Act added later on) at Police Station Rai, District Sonipat.

2. As per prosecution allegations, 535 kg of ganja in 18 bags was recovered on 30.03.2022 from Ramphal and petitioner – Bal Kishan from a canter vehicle, when the same was intercepted by the Police. Petitioner was driving the vehicle at that time.

3. It is contended by learned counsel that petitioner is in custody since 30.03.2022; that compliance of Section 42 of the NDPS Act was not made in letter and spirit, that petitioner was hired by co-accused Ramphal and that trial may take long time to conclude and, therefore, petitioner be allowed bail. Learned counsel for the petitioner has relied upon

Hasanujjaman and others Vs. The State of West Bengal – Special Leave to

Appeal (Crl.) No(s).3221/2023 decided on 04.05.2023, wherein the recovery

of 115 bottles (100 ml each) of phensedyl were recovered from the joint possession of the petitioners and after noticing that they were in custody for more than one year and four months, they were allowed bail by Hon'ble Supreme Court.

4. Learned State Counsel has strongly opposed the bail petition by pointing out towards the huge recovery of contraband effected from the petitioner and the co-accused and that Section 37 of the NDPS Act bars granting bail in such like cases. Learned State Counsel further drawn attention towards the disclosure statement of co-accused Ramphal revealing that when the petitioner was hired by him for bringing the contraband from Brahampur (Orissa), he was duly informed of the said fact. Attention is further drawn towards the fact that recovery was effected in presence of a gazetted officer after taking consent of the petitioner under Section 50 of the NDPS Act. With these submissions, prayer is made for rejecting bail petition.

5. I have considered submissions of both the parties and perused the record.

6. Recovery of 535 kg of ganja in 18 bags has been effected from a vehicle occupied by the petitioner and the co-accused Ramphal. Petitioner was very well aware about the contents of the bags contained in the vehicle as is evident from the disclosure statement of the co-accused, inasmuch as the petitioner was specifically hired for bringing the contraband from Brahampur in Orissa.

7. In the recent case of **Union of India v. Ajay Kumar Singh, (2023 SCC OnLine SC 346)** before Hon'ble Supreme Court, 6 packets and

The seized packets, apparently containing Ganja, were weighed and their gross weight was found to be 3971.600 kg. Respondent-accused were found involved in similar crimes in the past and that several cases were pending against him. High Court allowed bail. State approached the Apex Court against the said order. Hon'ble Supreme Court referring to Section 37 of the NDPS Act, observed as under:

“14. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow: -

“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 2[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.”

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied

that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail. The quantity of “ganja” recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not prima facie guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.”

8. In present case, it is no doubt true that petitioner is in custody for the last 01 year 06 months and 02 days, as per the custody certificate placed on record, with no criminal antecedents but having regard to the heavy recovery of contraband effected from the conscious possession of the petitioner and the co-accused and the bar of Section 37 of the NDPS Act, but without commenting anything on the merits of the case, this court is not inclined to grant concession of regular bail to the petitioner.

As such, present petition is hereby dismissed.

October 07, 2023

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(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No