

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

263

**CRM-M-15367-2022 (O&M).
Date of Decision: 05.01.2023.**

Satish

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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

Mr. Vivek Chauhan, Addl. A.G. Haryana.

VINOD S. BHARDWAJ. J (ORAL)

The instant **Second** petition has been filed under Section 439 of the Code of Criminal Procedure, for the grant of regular bail in FIR bearing No.517 dated 01.08.2021, registered under Sections 22 (C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), at Police Station Rohtak City, District Rohtak.

Briefly summarised, the facts of the present case are that a secret information was received by the Investigating Officer to the effect that one Satyabir son of Dharampal, resident of Bansantpur, District

Rohtak, is involved in the illegal business of intoxicating drugs and that he is carrying intoxicants/psychotropic substances in the vehicle bearing registration No. DL-1CV-7796 Mark ECCO colour white owned by the petitioner Satish son of Sher Singh resident of village Brahmanwas. A barricading was thereafter laid whereupon the petitioner along with his co-accused were intercepted and recovery of 720 vials of OMEREX 100 ml. each was recovered from the said vehicle driven by the petitioner.

Learned counsel appearing on behalf of the petitioner contends that the case in question was framed against the petitioner and that he had no knowledge about the intoxicants being carried in the vehicle. The petitioner was a taxi driver and was not aware about the nature of the goods loaded by the co-accused, who was the owner of the said contraband. He further contends that compliance of the mandatory provisions of Section 42 of the NDPS Act, had not been made and that the samples had not been sent for examination to FSL expeditiously and that there was a delay of 10 days in dispatch of the said samples. He also argues that out of a total of 16 witnesses cited by the prosecution only one witness has been examined so far. The case is now fixed for 05.05.2023 for examination of the prosecution witnesses and that the petitioner does not have any previous criminal antecedents. Learned counsel for the petitioner further places reliance on judgment of this Court in the matter of **Amrik Singh @ Resham Singh Vs. State of Punjab CRM-M-36373-2020 decided on 13.01.2022**, where the bail had been granted to the accused upon his having undergone 15 months

custody and when only one witness had been examined in a case pertaining to commercial quantity. Further reference is also made to the judgment in the matter of **Vinod Mukhiya Vs. State of Haryana, reported as 2021 (3) Law Herald 2070**, where the concession of bail had been granted after noticing that there had been a delay of 25 days in sending the samples to FSL. Reliance was also placed on the judgment of a Coordinate Bench of this Court passed in the matter of **Pankaj Vs. State of Punjab, CRM-M-25498-2021 decided on 14.06.2022** wherein also the samples had not been sent within 72 hours of seizure.

It is thus argued by the learned counsel for the petitioner that as there is an inexplicable delay in sending the samples to the FSL for examination, the concession of bail be also extended to the petitioner.

Per contra, learned State counsel has pointed out that as a matter of fact the petitioner was owner of the vehicle and the police had duly examined the previous registered owner of the vehicle, who had specifically deposed that he sold the vehicle in favour of the petitioner. A wrong claim has been made by the petitioner that he was merely a driver and not owner of vehicle. He further points out that the petitioner has failed to point out any discrepancy or prejudice on a mere delay in sending of the samples to the FSL for examination and that in the absence of any prejudice being displayed, mere delay would not be sufficient to incarcerate the prosecution version. It is further pointed out that the petitioner was in possession of 720 vials of OMREX 100 ml. each which was nearly 70 times the prescribed commercial quantity. He

submits that no valid explanation has been put forth as to why the petitioner was carrying the aforesaid contraband in his vehicle and that the explanation offered that he was merely ferrying the contraband on the asking of Sayabir co-accused cannot be given much weightage at this stage. It is at best a testimony or defence of an accused against the other and such exculpatory disclosure statement cannot be given much credence or weightage. The testimony of the witnesses and the conscious possession of the petitioner is to be tested during the stage of trial. Since the commercial quantity has been recovered and there is no valid justification offered by the petitioner for being in possession of such huge quantity of contraband, the petitioner does not deserve the concession of bail. He further submits that delay was not caused due to any deliberate act of prosecution.

I have heard the learned counsel for the parties and have gone through the documents appended along with the present case.

The facts that have remained undisputed is that recovery of huge commercial quantity of contraband has been effected from the vehicle which was undisputedly driven by the petitioner. The case of the prosecution is that petitioner is the owner of the said vehicle. There can be no presumption that the petitioner was not aware of the boxes or their content and that Section 54 of the NDPS Act, 1985, raises a presumption against the petitioner. Accordingly, it is nowhere established from the record that the vehicle was being operated as a taxi. There was thus no occasion for the petitioner to be operating the private vehicle for hire or

reward. The petitioner has failed to refer to any specific violation of Section 42 of the NDPS Act, 1985 and has agreed that delay in sending samples to FSL would be violative of Section 42 of the NDPS Act, 1985.

The said Section is extracted as under:-

“42. Power of entry, search, seizure and arrest without warrant or authorisation.-- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,-

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed

place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

It is evident that Section 42 of the NDPS Act, 1985, does not deal with sending of seized sample to FSL and relates only to entry, search, seizure and arrest without warrant or authorization. Hence, reliance on alleged violation of Section 42 of the NDPS Act, 1985, is unsubstantiated and is uncorroborated.

Additionally, the petitioner has to overcome the impediment under Section 37 of the NDPS Act, 1985. There is also nothing to suggest that delay in concluding evidence is attributable to the prosecution.

The judgments relied upon by the learned counsel for the petitioner do not lay down any binding precedent regarding the effect of the delay, if any, in sending the samples to FSL and/or creating right to bail on the basis of the period of custody alone. The issue of bail has to be seen on the totality of circumstances, including the gravity of offence, the manner in which the same has been committed and the probabilities of defence and the surrounding circumstances. The period of custody is only one amongst such factors to be kept in mind by the Court. There is

nothing available on record on the basis whereof it can be assumed that the conclusion of trial is being unnecessarily delayed. All the witnesses are also stated to have already been bound down for 05.05.2023.

Taking into consideration the circumstances referred to above, as well as the heavy quantity involved in the present case, I do not deem it a fit case to grant concession of bail to the petitioner. The present **second** petition for the grant of regular bail is accordingly dismissed. The prosecution shall, however, complete its evidence expeditiously and preferably within a period of three months from the date next fixed before the trial Court for recording of evidence of prosecution witnesses.

January 05, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No