

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-22929-2021 (O&M)

Date of Decision: 23.2.2023

Surender @ Sunder

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Saurabh Sharma, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.163 dated 9.6.2020 registered for the offences punishable under Sections 188 IPC and Sections 20, 29 of NDPS Act at Police Station Sadar Hansi, District Hisar.

The allegations in nutshell are that on 9.6.2020, the police received secret information and then one Maruti car was seen coming from the side of village Kanwari. On seeing the police officials, the driver of the said car stopped it at some distance and he got down from the car and then ran away. However, the other occupants of the car were apprehended by the police who disclosed their names as Sachin and Surender (petitioner) and then search of the car was effected in the presence of Rakesh Malik, Tehsildar, on which, 4 plastic bags having *ganja* were recovered. One of the bag was weighing 22 kg. while other 3 bags were weighing 30 kg. each and

in total, 112 kg. of *ganja* was recovered. During the investigation, it was found that the driver who escaped from the spot was Sonu.

Counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and is in custody for the last more than 2 years, 8 months and 11 days and is not involved in any other criminal case. He further submits that the trial is not progressing ahead and it will take considerable time for the trial to conclude. So, prayer is made that the petitioner be released on bail.

Counsel for the petitioner has placed reliance upon SLP (Criminal) No.5769 of 2022; **Nitish Adhikary @ Bapan v. State of West Bengal**; decided on 1.8.2022 and SLP (Criminal) No.4173 of 2022; **Shariful Islam @ Sarif v. State of West Bengal**; decided on 4.8.2022 wherein the accused persons involved in cases relating to recovery of commercial quantity of contraband were ordered to be released on bail on the ground that they had undergone custody for a period of 1 year, 7 months and 1 year, 6 months respectively.

Present petition is opposed by the State counsel who submits that the commercial quantity of *ganja* was recovered from the petitioner and his co-accused by the police and that the trial is going on and already, 15 witnesses are examined on behalf of the prosecution out of total 21 witnesses. State counsel further submits that rigors of Section 37 of NDPS Act are applicable in the instant case. However, State counsel has not disputed the fact that the petitioner is in custody for the last about 2 years and 9 months and is having no criminal antecedents.

I have considered the submissions made by the counsel for the parties.

In the present case, the petitioner has already undergone incarceration for a period of more than 2 years and 8 months. The alleged recovery of 112 kg. of *ganja* undoubtedly comes under commercial quantity as per the provisions of NDPS Act. However, in this case, the petitioner is having no criminal history.

Admittedly, the trial is going on but still, 6 more witnesses remain to be examined on behalf of the prosecution. So, it will take considerable time for the trial to terminate.

Division Bench of this Court vide order dated 12.1.2022 passed in CRM-3773-2019 in CRA-D-198-DB-2017 titled **Bhupender Singh v. Narcotic Control Bureau**, had held that in case the accused person is able to make out a case within the parameter of Article 21 of the Constitution in view of the custody period, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act.

Hon'ble Apex Court in **Nitish Adhikary @ Bapan's** case (supra) enlarged the accused therein on bail as he was incarcerated for a period of 1 year and 7 months and in **Shariful Islam @ Sarif's** case (supra), the accused therein was incarcerated for a period of 1 year and 6 months in a case relating to recovery of commercial quantity of contraband.

Considering the facts and circumstances of the case, custody of the petitioner and the position of law as discussed above and the fact that the trial is likely to take time, further incarceration of the petitioner would be violative of right of the petitioner enshrined under Article 21 of the Constitution of India.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be

released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. The prosecution shall be at liberty to seek cancellation of the bail of the petitioner if in future, he is found indulging in drug trafficking or any other unlawful activity. However, nothing stated hereinabove shall be construed as expression of opinion on the merits of the case. The aforesaid observations are only for the purpose of adjudicating the present bail petition.

(KARAMJIT SINGH)
JUDGE

February 23, 2023
Paritosh Kumar

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