

CRM-M-29040-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-29040-2022

Date of decision: 20.07.2023

Rajbir

...Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sanchit Punia, Advocate,
for the petitioner.

Mr. Rupinder Singh Jhand, Addl. A. G. Haryana.

HARNARESH SINGH GILL, J. (ORAL)

1. Through this second petition, the petitioner seeks regular bail in case FIR No.228 dated 17.05.2021, registered under Sections 20 NDPS Act (later on added, Section 20-B NDPS Act), Section 188 IPC and Section 51 of the Disaster Management Act, 2005, at Police Station Narnaund, District Hansi.

2. Learned counsel for the petitioner contends that as per the allegations, recovery of contraband had been effected from a house belonging to the petitioner, which is situated within red-line (*lal dora*) of the village. It is further submitted that however as per the testimony of Ram Mehar Singh (PW 5), recorded during trial qua Phool Singh (child in conflict with law in the above-mentioned FIR), no such statement had ever been given by him that the house from where the contraband had been recovered, belongs to the petitioner. It is further submitted that the petitioner has been in custody since 22.05.2021; that similarly situated co-

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accused, namely, Balwan, Geeta, Sheela Devi, Ful Singh and Jasbir @ Jasmer have since been granted the concession of bail; that out of 24 prosecution witnesses, only 01 witness has been examined so far. So far as another case registered against the petitioner, under the NDPS Act, is concerned, he had been implicated on the disclosure statement of the co-accused therein and recovery effected from that co-accused was under the non-commercial quantity and vide order dated 22.11.2021, the petitioner had been granted the concession of bail therein. In support of his contentions, learned counsel relies upon the order dated 04.05.2023, passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 3221/2023, titled as 'Hasanujjaman & Ors Vs. The State of West Bengal'.

3. On the other hand, learned State counsel, while opposing the grant of bail to the petitioner, submits that recovery of 139 kgs. *Ganja Pati* effected from the house of the petitioner, falls under the commercial quantity; that the petitioner is a habitual offender and that the material witnesses are yet to be examined.

4. I have heard the learned counsel for the parties.

5. Although the extent of contraband recovered in the present case, falls under the commercial quantity, yet the fact remains that the petitioner has been in custody since 22.05.2021 and that out of 24 prosecution witnesses, only 01 witness has been examined so far. Trial is unlikely to conclude any time soon.

6. The Hon'ble Supreme Court in Hasanujjaman & Ors.(supra), while granting the benefit of bail to the petitioners therein, has held as under:

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“2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. They were arrested on the spot and have been in custody for more than one year and four months.

3. We have heard learned counsel for the parties and carefully perused the record.

4. The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court. 6.

Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.

7. The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.

8. The Special Leave Petition stands disposed of in the above terms.

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9. *As a result, pending interlocutory application also stands disposed of.”*

7. In view of the above, this Court finds that no useful purpose would be served by keeping the petitioner behind the bars. Resultantly, without commenting anything on the merits, lest it should prejudice the case of either side, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

20.07.2023

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No