

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

CRM-M-33268-2022 (O&M)

Date of decision : 02.08.2023

Sanjay @ Sanju

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Simranjeet Singh, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J.

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.389, dated 17.12.2020, registered for the offences punishable under Sections 15 and 27(a) of NDPS Act (Section 61/85 of NDPS Act added later on) registered at Police Station Bhuna.

2. As per the allegations levelled in the FIR it has been alleged as under:-

“On the basis of suspicion, I, SI ordered the driver to reach near these vehicles and on reaching near, it was seen in the light of official vehicle that on vehicle Alto facing towards Saniyana and other Bolero facing towards Chamar Khera and backside of both the vehicles was very near to each other and three young boys were loading some material into Alto by unloading from Bolero. On seeing police vehicle near, one young boy ran away towards Chamar Khera in Bolero vehicle. I got stopped the vehicle and with the help of officials, apprehended one boy along with alto vehicle at the spot and

other boy was apprehended by running to some distance. I left the officials to keep eye on boys apprehended and Alto and I, SI along with driver chased the bolero vehicle in official vehicle and in hurried manner, the bolero vehicle got unbalanced and went into the fields and the driver of car, on seeing his arrest, taking the benefit of dark of night, ran away from the spot leaving the vehicle. That I, SI, searched the said driver in torch light in the nearby mustard crop fields for long time, but could not be traced. On checking of bolero number, it was HR-26 BQ-8689 white colour. That the said Bolero was brought to the spot by toeing rope with official vehicle and the number of Alto was checked, which was HR 26AC-1070 silver colour. On the rear seat of Alto, five plastic bags of white colour were kept, which were taken into possession. The names and addresses of both the boys were asked turn by turn. First boy told his name as Sonu son of Sita Ram son of Brijlal Bhadu, resident of Naganthala, PS Agreha, District Hisar and other told his name as Sanjay @ Sanju son of Jaswant @ Satpal son of Basti Ram Khokhar, resident of dhani Jallopur, PS Sadar Ratia, District Fatehabad. The apprehended boys were asked about their running and about the bags kept on back seat of Alto, then they got puzzled and could not give any satisfactory reply. On the suspicions of having some intoxicant substance with both the boys and in the white color plastic bags kept in Alto, I introduced myself to both the boys and issued separate notices under Section 50 of NDPS Act that I, SI Surender Singh No.282/H Antinarcotic Cell, Fatehabad, have full doubt of having some intoxicant substance with you, Sonu son of Sita Ram son of Brijlal Bhadu, resident of Naganthala, PS Agroha, District Hisar, and in the white colour plastic bags kept in your Alto No.HR 26AC-1070 silver colour, as such you and plastic bags kept in your vehicle are required to be searched. You have legal right that you and plastic bags kept in your vehicle can be

searched in the presence of some Illaqa Magistrate or Gazetted Officer or Nodal officers appointed by Deputy Commissioner, Fatehabad, in pursuance to Petition No.5074/ 2019 filed in Hon'ble Supreme Court, and one of them can be called at the spot or you and your vehicle can be taken to them. You tell your choice." That Sonu above read and understood the notice served by me and got recorded the reply to the notice that 1, Sonu son of Sita Ram son of Brijlal Bhadu, resident of Naganthala, PS Agroha, District Hisar, have read and fully understand the notice served by you and I want to get myself and plastic bags kept in my vehicle from some Nodal Officer appointed by Deputy Commissioner Fatehabad. As such, for making search, Nodal officer appointed by Deputy Commissioner, Fatehabad may be called at the spot. Sonu and the witnesses put their respective signatures on the Notice and reply to notice. Similarly, 1, St served notice under Section 50 of NDPS to other boy that 1, SI Surender Singh No.282/H Antinarcotic Cell, Fatehabad, have full doubt of having some intoxicant substance with you, Sanjay Sanju son of Jaswant @ Satpal son of Basti Ram Khokhar, resident of dhani Jallopur, PS Sadar Ratia, District Fatehabad, and in the white colour plastic bags kept in your Alto No HR 26AC-1070 silver colour, as such you and plastic bags kept in your vehicle are required to be searched. You have legal right that you and plastic bags kept in your vehicle can be searched in the presence of some Illaqa Magistrate or Gazetted Officer or Nodal officers appointed by Deputy Commissioner, Fatehabad, in pursuance to Petition No.5074/ 2019 filed in Hon'ble Supreme Court, and one of them can be called at the spot or you and your vehicle can be taken to them. You tell your choice." That Sanjay @ Sanju above read and understood the notice served by me and got recorded the reply to the notice that 1, Sanjay @ Sanju son of Jaswant@ Satpal son of Basti Ram Khokhar, resident of

dhani Jallopur, PS Sadar Ratia, District Fatehabad, have read and fully understand the notice served by you and I went to get myself and plastic bags kept in my vehicle from some Nodal Officer appointed by Deputy Commissioner Fatehabad. As such, for making search, Nodal officer appointed by Deputy Commissioner, Fatehabad may be called at the spot. Sanjay Sanju and the witnesses put their respective signatures on the Notice and reply to notice. After the proceedings of notices, I, SI called Sh.Ranjit Singh, SDO W/S Fatehabad from personal mobile No.98962-99900 on his Mobile No.94166-44501 and made aware him of the circumstances. and requested him to reach at the spot. He told that I am reaching at the spot in few minutes. From my further inquiry from apprehended boy Sonu, he told the name of supplier i.e.. bolero driver, who ran away, as Sandeep resident of Surewala Uklana, District Hisar. After about one year Sh.Ranjit Singh, SDO, W/S Fatehabad in his official vehicle along with personal staff reached at the spot and I produced both the apprehended boys Sonu, Sanjay and Sanju, notices, replies to the notices, both the vehicles and witnesses, who perused the notices and replies and after inquiry from Sonu, Sanjay @ Sanju and witnesses, directed me, SI to make search of Sonu, Sanjay @Sanju, plastic bags of white colour kept in Alto vehicle No.HR 26AC-1070 silver colour and Vehicle Bolero No.HR 26-BQ-8689 white colour. As per directions, I made search of Sonu, Sanjay @ Sonu turn by turn and no intoxicant substance was recovered. Thereafter I checked the five No. plastic bags kept in Alto vehicle after opening mouths, then in all the bags, poppy husk was recovered and the search of Bolero vehicle was conducted and no intoxicant substance was recovered. That recovered bags of poppy husk were weighed on computer weight kept in official vehicle and each bag was found of 20 Kg 100 Gram along with bag. The total weight of five bags was 100 Kg 500 gram. That

parcels of all the recovered five plastic bags of white colour were prepared and were sealed with my seal SS/3 and sample seal was prepared separately and SDO Sahib also put his seal DS/1 on the parcels of poppy husk and sample seals. I took all the five parcels of poppy husk bags of white colour, total weighing 100 Kg 5 gram duly sealed along with sample seal, along with Alto No.HR 26AC-1070 silver colour and Bolero vehicle No.HR 26 BQ-8689 white colour, into police possession vide seizure memo. The seizure memo was signed by the accused Sonu, Sanjay @ Sanju and witnesses.”

3. Learned counsel for the petitioner submits that the petitioner is behind bar since 17.12.2020 and has undergone custody of 02 years 04 months and 19 days by now. Counsel further submits that the investigation stands concluded. Challan was presented on 25.10.2021 and charges were framed on 21.03.2022. Despite that the trial could not be concluded and out of 16 prosecution witnesses only 09 witnessess have been examined till date.

4. Reliance has been placed upon judgment passed by the Apex Court in the case of **“Deeraj Kumar Shukla Vs. The State of Uttar Pradesh”2022(4) All.LJ 518** wherein this Court has held as under:-

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1. The allegations are that on a secret information, the police authorities intercepted two vehicles on 23.06.2020 i.e. one 'Gray' coloured 'Honda City Car and the second 'White' coloured 'Swift Dzire' Car. On an interrogation at the spot, Praveen Maurya@ Puneet Maurya, Rishab Kumar Maurya and Dheeraj Kumar Shukla were found to be occupants of the Honda City Car whereas the petitioner was driving the Swife Dzire Car. On taking a search, more than 92 kgs. Ganja was allegedly recovered from Honda City' Car whereas more than 65 kgs. Ganja

was recovered from Swift Dzire Car. The accused were arrested at the spot. The petitioner is, thus, in custody since 24.06.2020.

2. It appears that some of the occupants of the Honda City' car including Praveen Maurya @ Puneet Maurya have since been released on regular bail. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.

3. For the reasons stated above but without expressing any views on the merits of the case, the petitioner is directed to be released on bail subject to his furnishing bail bonds to the satisfaction of the Trial Court.

4. It is made clear that in addition to the conditions that may be imposed by the Trial Court, the petitioner shall be required to appear before the Trial Court on every date of hearing. In case the petitioner is found to be involved in future in any other similar case, the respondent - State shall be at liberty to seek cancellation of bail granted to him by this Court.

5. The Special Leave Petition stands disposed in the above terms.

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

5. Learned counsel further relies upon judgment passed by Hon’ble Apex Court in the case of ***“Rabi Prakash Vs. The State of Odisha” Special Leave to Appeal(Crl.) No(s). 4169/2023*** wherein this Court has held as under:-

“1. The petitioner seeks his enlargement on bail in P.S.Case No.91 of 2019, registered at Police Station Semiliguda, District Koraput, out of which T.R.Case No.27 of 2019 is pending in the Court of Addl.Sessions Judge-cum-Special Judge, Koraput, for

commission of offence punishable under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

2. The prosecution case appears to be that the police party while on patrolling duty on 02.10.2019 at about 12.30 p.m. on Nandapur-Semiliguda road MDR-55, spotted one full body twelve wheeler Truck (Eicher) bearing No.EB-13-BD-5753 coming from Nandapur side at a high speed and accordingly they chased and detained the truck at Bodenga Chhak and found three persons boarded in the said truck including the driver. Eventually, 247 kg. Ganja was recovered from the truck. The petitioner was one of the occupants of the truck and was arrested at the spot. He has been in custody for more than three and a half years. There are no criminal antecedents against the petitioner.

3. We are informed that the trial has commenced but only 1 out of the 19 witnesses has been examined. The conclusion of trial will, thus, take some more time.

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.

5. However, we find some merit in the contention of learned counsel for the respondent – State that the petitioner being not a resident of the State of Orissa, some stringent conditions are required to be imposed upon him.

6. Consequently, while directing that the petitioner shall be released on bail on his furnishing bail bonds to the satisfaction of the Trial Court, it is directed that he shall be required to produce two local sureties before the Trial Court. The petitioner shall also appear before the Trial Court on every date 3 of hearing. In case he absents himself, it shall be taken as a misuse of concession of bail granted to him today by this Court. Ordered accordingly.

7. The Special Leave Petition stands disposed of accordingly.

8. As a result, pending interlocutory applications also stand disposed of.”

6. Keeping in view the aforesaid law that wherever there is denial of right for speedy trial to an under-trial rigours of Section 37 will have to pave way for liberty.

7. The aforesaid assertions made by learned counsel for the petitioner has not been controverted by counsel for the State.

8. I have heard learned counsel for the parties and have gone through the record of the case.

9. Without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. Without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

(i) The petitioner shall not mis-use the liberty granted.

- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

11. Ordered accordingly.

August 02, 2023
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(PANKAJ JAIN)
JUDGE

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