

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-35832 of 2023(O&M)
Date of Decision: 01.08.2023

Dharamvir

...Petitioner

Versus

State of Haryana

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Keshav Pratap Singh, Advocate
For the petitioner.Mr. Neeraj Sheoran, DAG Haryana.
***KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case having FIR No. 43 dated 23.02.2021, registered under Section 20(c), 27-A and 29 of Narcotic Drugs and Psychotropic Substances Act (for brevity, the Act), Police Station Sadar, Fatehabad.

2. The brief facts of the case are that on 23.02.2021 police apprehended Etios car No. HR22S-8269 which was driven by co-accused Ram Niwas @ Kala and the petitioner was sitting along side the driver seat and on checking of the car 2 quintals 1 kg 450 grams of *ganja* contained in 08 plastic bags was recovered.

3. The counsel for the petitioner, *inter alia*, contends that the petitioner is falsely implicated in the present case and is having no concern with car No. HR22S-8269 and no contraband was recovered from the

possession of the petitioner. The counsel for the petitioner further submits that as per prosecution version the recovery was effected in presence of Gazetted Officer but the said officer did not issue any notice under Section 50 of the Act before effecting personal search of the petitioner and search of car and thus the entire proceedings stand vitiated. The counsel for the petitioner further submits that the petitioner is in custody since 23.02.2021 and is having no criminal history under the Act and that trial is not proceeding ahead and till date no prosecution witness has been examined. The counsel for the petitioner further submits that no doubt the recovery alleged to be effected in the present case is of commercial quantity, the long incarceration of the petitioner amounts to violation of guarantee of personal liberty as provided in Article 21 of the Constitution. The counsel for the petitioner further submits that even the Hon'ble Apex Court, under similar circumstances, in case titled as **Hasanujjaman & Ors. The State of West Bengal, SLP (Crl.) No. 3221 of 2023, decided on 04.05.2023**, relating to recovery of commercial quantity of contraband has granted bail to the accused who was in custody for more than one year and four months.

4. The present petition is resisted by the State counsel who submits that commercial quantity of contraband was recovered from a car in which the petitioner was travelling along with its driver Ram Niwas. It is further submitted that there was no need for issuance of notice under Section 50 of the Act as the recovery is effected from car and not from the person of the accused. The State counsel further submits that embargo contained in Section 37 of the Act is applicable to the instant case. However, the State counsel on instructions from ASI Chiman Lal has not disputed the fact that the petitioner is in custody for the last more than 02 years and 04 months and

is not having criminal history under the Act and further till date no prosecution witness has been examined.

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

6. Admittedly, the petitioner is in custody since 23.02.2021 and the trial is not progressing ahead as till date no witness on behalf of prosecution has been examined. Further, the petitioner is not facing any other criminal case under the Act and he is not a previous convict. In the given circumstances, the trial of the present case is not likely to be concluded any time soon. In view of the delayed trial, the rigors of Section 37 of the Act can be diluted to an extent and the petitioner can be enlarged on bail keeping in view the right to a speedy trial as envisaged under Article 21 of Constitution of India.

7. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

01.08.2023

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**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No