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

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CRM-M-37678-2023

Date of decision : 09.08.2023

Sonu

..... Petitioner

versus

State of Haryana

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana.

PANKAJ JAIN, J. (Oral)

Prayer is for grant of regular bail in FIR No.389 dated 17.12.2020, registered for offences punishable under Sections 15, 27(a), 61 and 85 of NDPS Act, at Police Station Bhuna, District Fatehabad.

2. As per the case of the prosecution, it has been claimed that:-

“On 17.12.2020, SI Surender Singh along with other fellow police officials reached near Bus Stand of village Saniyana for patrolling and narcotic drugs checking duty. Then, he found that two vehicles were standing on Chamar Khara Road and the indicators of both the vehicles were switched on. On having suspicion, SI Surender Singh got checked the vehicles and found that one vehicle was make Alto car and the other vehicle was make Bolero. The police party also found that three young boys were unloading some articles from the Bolero vehicle in the Alto car. On seeing

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the police party, one of the young boys fled the spot along with Bolero vehicle but SI Surender Singh with the help of other police officials apprehended one of the young boys with Alto car and the third young boy was also apprehended at some distance. The police party also followed Bolero vehicle and the driver of the Bolero vehicle due to imbalance drove his vehicle in the nearby agriculture fields and he fled the spot leaving behind the Bolero vehicle at the spot. Registration number of the Bolero vehicle was found to be HR-268Q/8689 whereas the registration number of the Alto car was found to be HR-26AC/1070. Five plastic bags were found kept on the rear seat of the car make Alto. Upon enquiry, the two young boys apprehended at the spot disclosed their names as - Sonu son of Sita Ram son of Brij Lal Bhadu, resident of village Nangthala, Police Station Agroha, District Hisar and Sanjay @ Sanju son of Jasbant @ Satpal son of Basti Ram Khokhar, resident of Dhani Jallopur, Police Station Sadar, Ratia, District Fatehabad. On having suspicion of some intoxicating material in the plastic bags, two separate written notices under section 50 of NDPS Act were served upon them by apprising them that there was suspicion of some intoxicating material with them and in their car make Alto bearing registration No. HR-26AC/1070 and therefore, search was required to be taken. The accused were also apprised about the legal requirements of the notices. Accused Sonu and Sanjay @ Sanju submitted their replies that they wanted to get conducted their search in the presence of a nodal officer. Therefore, Sh. Ranjeet Singh, SDO, Water Services, Fatehabad was informed on

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his mobile phone and he was requested to reach at the spot. Upon enquiry, the petitioner/accused Sonu disclosed the name of the driver of the Bolero vehicle, who fled the spot as Mandeep, resident of village Surewala Ukalana, District Hisar and after one hour Sh. Ranjeet Singh, SDO, Water Services, Fatehabad along with his staff reached at the spot. Thereafter, search was conducted. On checking of the plastic bags kept in the car make Alto, Kachra Doda Post (poppy-straw) was recovered. On weighment 20 kg, 100 grams of Kachra Doda Post (poppy straw) was recovered from each plastic bags and thus the total weight of the recovered Kachra Doda Post (poppy-straw) was found to be 1 quantile 500 grams. The recovered contraband was converted into separate parcels and sealed with seal having inscription "SS". Sh. Ranjeet Singh, SDO, Water Services, Fatehabad also affixed his seal having inscription "DS" and the recovered contraband was taken into police possession vide a separate seizure-memo. The present case FIR was registered. The present petitioner/accused Sonu and co-accused Sanjay @ Sanju were arrested and they suffered their disclosure statements regarding their involvement in the present case.”

3. Counsel for the petitioner relies upon order dated 02.08.2023 passed by this Court in CRM-M-33268-2022 to submit that the petitioner is similarly situated to Sanjay @ Sanju and has behind bar since the date of occurrence i.e. 07.12.2020 and has now undergone custody of more than two years and 05 months. Investigation already stands concluded and the challan was presented way back on 25.10.2021 and till now 09 witnesses, out of 16 cited witnesses have

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been examined.

4. Counsel for the State does not dispute that the petitioner would be similarly situated to Sanjay @ Sanju, who has been granted concession of regular bail observing as under:-

“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:-

“xxxx

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 Swift 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

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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**

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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

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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

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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.

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(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.”

5. Granting parity, 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.

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- (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.

6. 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.

7. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

09.08.2023

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Whether speaking/reasoned : Yes

Whether Reportable : No