

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

CRM-M-38661-2023

Date of decision : 16.08.2023

HARPREET SINGH @ DALVEAR SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sonpreet S. Brar, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.0082, dated 01.11.2020 registered for the offences punishable under Sections 22, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Bajakhana, District Faridkot.

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

“today myself sheet ASI along with ASI Harpreet Singh 31/FRT, Jagtar Singh, 321754 PHG present on private at Bus Stand Bargarhi in connection with vehicle were patrolling, then a special informer has informed me that Gurwinder Singh son of Bhajan Singh resident Landey and Harpreet Singh son of Bikkar Singh resident of Charik are coming towards Bargarhi on Truck Tralla bearing registration No. PB13-BB-7299. Gurwinder Singh is driver of Truck Tralla and Harpreet Singh is conductor. They

are bringing intoxicating tablets on the above said PB13-BB 7299, if appropriate Nakabandi be done, then they both can be apprehended along with intoxicating tablets. Since the information is reliable and trustable, therefore the above said act of Gurwinder Singh and Harpreet Singh is covered under section 22/61/85 of NDPS Act, 1985, therefore the Ruga is being sent to the Police Station Bajakhana by the hand of PHG Jagtar Singh No. 21754 for registration of case against Gurwinder Singh son of Bhajan Singh resident of Landey and Harpreet Singh a son of Bikkar Singh resident of Charik above said. After register the case, the number of the same be intimated. Special reports be issued and be sent to the Illaga magistrate and cannot conduct the investigation of NDPS Act as officers. Myself ASI have not regular rank, therefore any regular SI/ASI be sent on the spot. Myself ASI associate officials is going to the Old Chowki along with Bargarhi for Nakabandi. Sd/- Jagroop Singh ASI/ 672, Police Post Bargarhi, Police Station Bajakhana, dated 01.11.2020, today within the limits of Bus Stand Bargarhi at 10.05 PM.

Today in Police Station: On receiving of above said Ruga in the Police Station, the case under above said section has been registered against Gurwinder Sing and Harpreet Singh above said. The copy of FIR along with original Ruqa is being sent to the spot for ASI by the hand of Arinda PHG. The special a reports are being sent to Illaga Magistrate and a senior officers by the hand of Ct. Manpreet Singh No. 1072/FKT. PCR is being intimated separately. Xxx”

3. As per the case of the prosecution, the allegations levelled against the petitioner are as under :

“FIR has been registered against accused Gurwinder Singh and Harpreet Singh, on true facts, as 22000 intoxicant tablets were recoered from their possession. During

investigation, on the basis of confession made by accused Gurwinder Singh, Kamal Vishnoi Ayurvedic Store, village Ramji Goll, District Jalour, Rajasthan and Gurtej Singh @ Gagni were nominated as accused and offence under Section 29 of NDPS Act was added, vide DDR No.28 dated 04.11.2020.”

4. Custody Certificate of the petitioner has been produced today in Court, which is taken on record. As per the same, the petitioner has already undergone custody of 2 years 9 months and 12 days.

5. Counsel for the petitioner submits that keeping in view the prolonged incarceration of the petitioner and the fact that the trial has not proceeded as only 7 out of 21 cited witnesses, have been examined so far, the petitioner shall be entitled to bail. He further submits that keeping in view the law laid down by this Court in **Bhupender Singh vs. Narcotic Control Bureau, (2022) 2 RCR (Criminal) 706** whereby the Division Bench of this Court held that where a right to speedy trial vested in the petitioner and recognized under Article 21 of the Constitution of India gets defeated, Section 37 of the NDPS Act will have to pave way and the petitioner shall be entitled to grant of bail. It has been further claimed that the petitioner has no other criminal antecedents. Apart therefrom, Counsel for the petitioner relies upon order dated 2nd of August, 2023 passed in CRM-M-28909-2023 whereby co-accused namely Gurwinder Singh who was driver of the truck already stands admitted to regular bail observing as under :

“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.82, dated 01.11.2020, registered for the offences punishable under Sections 22 of NDPS Act at Police Station Bajakhana, District Faridkot.

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

"Today 1 ASI along with ASI Harpreet Singh 31/Faridkot, PHG Jagtar Singh 21754, were present on a private vehicle at Bus Stand Bargari for checking. Then one informer gave information to me that Gurvinder Singh son of Bhajan Singh resident of Lande and Harpreet Singh son of Bikkar Singh resident of Charik were coming towards Bargari on Tralla Truck No.PB-13-BB-7299. Gurvinder Singh is driver of Tralla Truck and Harpreet Singh who is conductor, are coming on a Tralla Truck No.PB-13- BB-7299 and bringing intoxicant tablets by hiding in it. If proper barricading is laid, then both the persons can be apprehended along with huge amount of intoxicant tablets. Since the information is reliable and believable, therefore, the offence U/s 22/61/85 of NDPS Act is made out against Gurvinder Singh and Harpreet Singh. Therefore, ruqa has been written against above mentioned Gurvinder Singh son of Bhajan Singh resident of Lande and Harpreet Singh son of Bikkar Singh resident of Charik and same is sent to police station Bajakhana by hand through PHG Jagtar Singh 21754. After registration of case, case number may kindly be intimated. After preparing the special reports, same has been sent to the Ilaga Magistrate and Higher Officials. Since I am not an ASI of regular rank, so cannot investigate the case under NDPS Act, therefore, some regular SI/ASI be sent on the spot. I ASI along with companion officials, are going to old chowki Bargari for barricading. Sd/- Jagrup Singh ASI/672. chowki Bargari, police station Bajakhana dated 01.11.2020."

3. As per prosecution it has been claimed that:-

“The petitioner and one Harpreet Singh were apprehended by the police party headed by SI Harprem Singh and 22000 intoxicant tablets were recovered from their possession. During investigation, Gurwinder Singh made a confession that they have brought the intoxicants tablets from Kamal Vishnoi Ayurvedic Centre, village Ramji Gol, District Jalour (Rajasthan) and used to sell the same to Gagni son of Gurjant Singh alias Janta. So, vide DDR No.28 dated 04.11.2020, Kamal Vishnoi Ayurvedic Store, and Gagni son of Gurjant Singh alias Janta, resident of village Jeeda, were nominated as accused.”

4. Learned counsel for the petitioner submits that the petitioner is behind bar since 05.11.2020 and has undergone custody of 02 years 09 months by now. Counsel further submits that the investigation stands concluded. Challan was presented and charges were framed. Despite that the trial could not be concluded and out of 21 prosecution witnesses only 07 witnesses have been examined till date.

5. 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 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.

6. 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.”

7. 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.

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

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

10. 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.

11. 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.

12. Ordered accordingly.”

6. State Counsel does not dispute the aforesaid factual assertions based on record.

7. In view of above, without commenting on the merits of the case and keeping in view the incarceration already suffered by the petitioner, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. However in order to ensure that the petitioner does not repeat the misadventure of abusing the concession of bail, he shall be bound by the following conditions in addition to the conditions that may be imposed by the Trial Court :

- (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.

9. 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.

10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

August 16, 2023
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned

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Yes/No

Whether reportable

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Yes/No