

204

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

**CRM-M-42189-2023
Date of Decision: 30.10.2023**

Ravi

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. V.P. Sangwan, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

HARSH BUNGER J.

1. This is the third petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Ravi) for grant of regular bail in case bearing FIR No.72 dated 18.05.2021 (Annexure P-1), under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the N.D.P.S. Act') (Section 25 of the Arms Act and Sections 216, 395 & 427 read with Section 34 of the Indian Penal Code, added later on), registered at Police Station Satnali, District Mahendergarh.

2. In pursuance to an advance notice served upon the State of Haryana, status report by way of affidavit dated 12.09.2023 of Mr. Ranbir Singh, H.P.S., Deputy Superintendent of Police, Mahendergarh, District Mahendergarh (Haryana) and custody certificate dated 04.10.2023 of the

petitioner have been filed on behalf of State of Haryana, which are already on record.

3. Brief facts of the case are that when on 18.05.2021, Sub Inspector Virender along with other police officials were present at Barda T-Point in connection with patrolling duty then in the meanwhile, a secret information was received that a canter of an unknown person is lying there. On the basis of the said information, Sub Inspector Virender Singh prepared a raiding party and reached near the Canter bearing No.HR-61D-7282 and there was some apprehension of having drugs in the bags, which was found in the vehicle. Thereafter, notice under Section 42 of the N.D.P.S. Act was prepared, whereupon Mr. Satbir Singh, Lecturer, the Duty Magistrate reached at the spot and in his presence, the canter was checked, in which, the bags containing cannabis were found, which upon weighing came to be 17 quintile 12 kgs. and 760 gms. The aforesaid vehicle along with the cannabis were taken into possession. Further during the search of vehicle, a wallet containing an amount of Rs.510/-, one driving licence of Ravi Kumar s/o Omparkash r/o Naurangabad, one Aadhaar Card of Ravi s/o Raj Kapur r/o Mela Ground, Latiya Wala Johar, Bhiwani and one broken A.T.M. Card of A.X.I.S. Bank were found and the same were taken into police possession. Accordingly, the instant FIR was got registered.

4. As per the status report, during investigation, on the basis of driving license pertaining to Ravi (petitioner) s/o Omparkash and Aadhaar Card pertaining to co-accused Ravi s/o Raj Kapoor, the record of original owner of Canter No.HR-61D-7282 was obtained and it was found that the owner of the aforesaid canter was accused Ravi (petitioner) s/o Omparkash. Thereafter, a notice under Section 133 of the Motor Vehicles Act and

Section 91 of the Code of Criminal Procedure was issued upon the petitioner. Further it was found that Ravi s/o Raj Kapoor r/o Mitathal, presently resident of Nathia Wala Johar, Sector 23, Bhiwani, was working as a Driver on the said canter, whose mobile number is 8396905087. The investigating officer had obtained the list of required mobile numbers, which were found during mobile dumping, and on the basis of mobile details, it was found that in the night of 17/18 May, 2021, the location of the aforesaid mobile number 8396905087 was Village Barda, Nawan, i.e. the area of Satnali, and at that time, calls were made on the mobile Nos.9500092780, 9361460007 and 9500006370, which were pertaining to accused Ravi (petitioner) s/o Omparkash. Information was sought from the mobile company in respect of the above mobile numbers and it was found that S.I.M. holder of the said mobile was Ravi (petitioner) s/o Omparkash r/o Norangabad, District Bhiwani, who is the owner of Canter No.HR-61D-7282 Chassis No.MC2B7CRCOKB431874 and Engine No.E414CDKB265659.

5. It is further stated in the status report that during the investigation, present petitioner was arrested in this case on 27.05.2021 from Thurunelakandan Nagar, Kavangararai, Chennai (Tamil Nadu) and at the time of his arrest, five mobile phones and one laptop were taken into police possession, from his custody. In the said five mobile phones, mobile Nos.9500092780, 9361460007 and 9500006370 were also found, on which the calls were made from mobile No.9396905087 (pertaining to the Canter's driver) and 9306591345 (pertaining to co-accused Kuldeep), who were present at the place of occurrence. It is also stated in the status report that during interrogation, the petitioner had suffered his disclosure statement

wherein he admitted his involvement in the present crime, alongwith other co-accused. Thereafter, the petitioner was taken on one day transit remand and produced in the Court of Illaqa Magistrate, Mahendergarh on 28.05.2021 and taken on four days police remand. Thereafter, the petitioner was produced in the Court below on 01.06.2021 and again taken on two days police remand; and after completion of his police remand, the petitioner was produced in the Court below on 03.06.2021, from where he was sent to the judicial custody and since then he is confined in the District Prison, Narnaul. It is further stated that as per disclosure statement of co-accused Ravi s/o Raj Kapoor, who was the driver of Canter No.HR-61D-7282 as well as the disclosure statement of the petitioner, who was the owner of the said canter, it has been established that during the investigation, the said Canter No. HR-61D-7282 was caught by the police on 18.05.2021, which was sent by co-accused Pardeep Sharma, whose mobile Nos. are 9438252424 and 8763792027. The said canter was loaded on 13.05.2021 by the petitioner, which started proceeding from the Dara Konda and the *Ganja-Patti* was to be delivered to co-accused Kuldeep. It is stated in the status report that during investigation, Sections 285 and 392 of the Indian Penal Code were deleted and Section 395 of the Indian Penal Code was added, as per the direction of Deputy Superintendent of Police, Narnaul.

6. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case on the basis of disclosure statement of one Ravi Kumar s/o Raj Kapoor. It is submitted that the petitioner was not arrested at the spot and the alleged recovery was made by the police from the area of Village Barda whereas the petitioner has

been arrested from Chennai (Tamil Nadu), only on the basis of call locations, which is not admissible in evidence.

7. Learned counsel for the petitioner submits that the learned Additional Sessions Judge, Narnaul has wrongly dismissed the application for regular bail filed on behalf of the petitioner, vide order dated 06.12.2021 (Annexure P-2). Learned counsel further submits that no other case is pending against the petitioner and he is in custody since 27.05.2021. Learned counsel states that trial in the case is likely to take long time to conclude and no useful purpose would be served by keeping the petitioner behind bars for indefinite period. Learned counsel for the petitioner submits that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

8. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. Learned State counsel submits that in fact the petitioner is the owner of Canter No.HR-61D-7282, from where a huge of quantity of *ganja*, weighing 17 quintile 12 kgs. and 760 gms. has been recovered, which falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. Learned State counsel submits that co-accused Ravi s/o Raj Kapoor was arrested in the present case on 22.05.2021 and during the interrogation, he had suffered his disclosure statement wherein he disclosed that he is working as a Driver, since last two years, with his employer Ravi (petitioner) s/o Om Parkash r/o Naurangabad, who is having transport business in Chennai. On 23.05.2021, co-accused Ravi s/o Raj Kapoor was produced in the Court below and taken

on five days police remand. During the police remand, he suffered the disclosure statement on 27.05.2021, wherein he stated that the earlier disclosure statements were false and further disclosed that his truck's owner Ravi (petitioner) has good relations with Pardeep Kumar and Jairam, since a long time, who are involved in the business of *ganja*; his employer Ravi (petitioner) had a conversation with Jairam and Pardeep regarding the supply of *ganja* and Jairam assured Ravi (petitioner) to pay him an amount of Rs.3,50,000/- for carrying the *ganja* to Satnali, whereupon Ravi (petitioner) asked Ravi s/o Raj Kapoor (co-accused) to load *ganja* from Orissa in the truck, for which petitioner would pay him Rs.30,000/-, and as such the petitioner was directly involved in the business of *ganja*.

9. Learned State counsel submits that in case the petitioner is released on bail then he might influence the witnesses and also abscond and delay the trial. Accordingly, prayer for dismissal of the present petition has been made.

10. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

11. Admittedly in the instant case, a huge quantity of *ganja*, i.e. 17 quintile 12 kgs. and 760 gms., has been recovered, which falls under the category of 'commercial quantity' and thus rigors of Section 37 of the N.D.P.S. Act are attracted in this case. Section 37 *ibid* reads as under:-

S.37 "Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

12. The Apex Court in **“Union of India vs. Rattan Mallik @ Habul”, 2009 (1) R.C.R. (Criminal) 938**, had observed that when an accused is arrested in a case under Narcotic Drugs and Psychotropic Substances Act, grant of bail to such accused is not only subject to limitations imposed under Section 439 of the Criminal Procedure Code, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act and the accused will be granted bail only if the Court is satisfied that there is reasonable ground for believing that accused was not guilty of offence and he was not likely to commit an offence under Narcotic Drugs and Psychotropic Substances Act while on bail. In that way, bail could be granted, if mandatory provisions of Section 37 of Narcotic Drugs and Psychotropic Substances Act are satisfied.

13. In **“State of Kerala etc. vs. Rajesh etc.”, 2020(1) R.C.R. (Criminal) 818**, Hon'ble the Apex Court had observed as under:

19. This Court has laid down broad parameters to be

*followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In **Union of India v. Ram Samujh and Ors. 1999(4) RCR (Criminal) 93 : 1999(9) SCC 429**, it has been elaborated as under:-*

*"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in **Durand Didier v. Chief Secy., Union Territory of Goa [1989(2) RCR (Criminal) 505 : (1990) 1 SCC 95]** as under:*

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by

introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

14. In the instant case, it has come on record that the petitioner is the owner of Canter bearing No.HR-61D-7282, from where the recovery in

question has been effected. It has further come on record that at the time of arrest of the petitioner, five mobile phones and one laptop were taken into police possession, from his custody, which were used in the commission of crime. The petitioner is also stated to have suffered his disclosure statement wherein he has admitted his involvement in the crime in question.

15. In the instant case, concededly petitioner is the owner of the canter from which the recovery of huge quantity of contraband was made and it is *prima facie* improbable that petitioner was not aware about such huge quantity of contraband carried in his vehicle. There is nothing on record to enable this Court to record *prima facie* satisfaction for believing that petitioner is not guilty of the offence or that he will not commit any offence while on bail.

16. Further in my considered opinion, when the accused is facing serious charges, he may develop temptation to jump the bail. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly.

17. It is a matter of common knowledge that drug menace is ruining the lives of many of the young people. The drug peddlers, for their own monetary gains, are misleading the youth towards drugs consumption, which is not only affecting these young people but is also affecting their families. The drug menace and the drugs peddlers are required to be dealt with stern and firm hands.

18. Hence, keeping in view the aforementioned circumstances and also the seriousness and gravity of offence, I do not deem it fit to extend the

concession of regular bail to the petitioner. Accordingly, the present petition is dismissed. However, learned trial Court is directed to expedite the trial, if possible.

19. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

20. All pending application(s), if any, shall also stand closed.

30.10.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No