

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-51766-2023 in/and
CRM-M-42887-2023
Date of Decision: 18.12.2023

Pankaj Kumar Jatav

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Deepak Grover, Advocate
for the applicant/petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER J.

CRM-51766-2023:

Present application is filed for placing on record the zimni orders passed by the trial Court.

For the reasons mentioned in the application, zimni orders passed by the trial Court are taken on record, subject to all just exceptions.

Application is accordingly disposed of.

CRM-M-42887-2023:

1. This is a second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Pankaj Kumar Jatav) for grant of

regular bail in case bearing FIR No.201 dated 31.07.2022, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the N.D.P.S. Act'), registered at Police Station Patran, District Patiala.

The first petition (CRM-M-52072-2022) was withdrawn by learned counsel for the petitioner vide order dated 16.05.2023.

2. In pursuance to an advance notice served upon the State of Punjab, status report by way of affidavit dated 18.09.2023 of Mr. Daljit Singh Virk, P.P.S., Deputy Superintendent of Police, Sub Division Patran, District Patiala has been filed on behalf of State of Punjab, which is already on record.

3. Custody certificate dated 17.12.2023 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Brief facts of the case are that on 31.07.2022, when Assistant Sub Inspector Channa Ram along with the police party was present at T-point Arno, in connection with patrolling and checking of suspected persons, then at around 4:30 P.M., a secret information was received that one Pankaj Kumar Jatav s/o Rajesh Kumar, who is habitual of selling intoxicant tablets, is coming from the side of Kaithal (Haryana) on his motorcycle bearing registration No.DL-8SCV/5546 (make Bajaj Pulsar; black colour) carrying a bag pack (*pithoo* bag) containing intoxicant tablets and if the *nakabandi* be held then he could be apprehended along with the intoxicant tablets. Relying upon the same, Assistant Sub Inspector Channa Ram sent *ruqa* to the police station for registration of the present FIR. Thereafter, report under Section 42 of the N.D.P.S. Act was prepared at the spot by said

Assistant Sub Inspector Channa Ram and the same was sent to the Senior Officer; and he also requested to depute some competent Investigating Officer for further investigation, whereupon, Sub Inspector Mohan Singh, Station House Officer, Police Station Shutrana, along with the police party, reached at the spot and led barricading. Thereafter, the police party started checking the vehicles coming from the side of Kaithal (Haryana); and at about 5:45 P.M., one motorcycle bearing registration No.DL-8SCV/5546 (make Bajaj Pulsar; black colour) was seen coming from Kaithal side, which was being driven by a clean shaven person carrying a *pithoo bag* of black colour on his back, whereupon, Sub Inspector Mohan Singh gave the said person a signal to stop, who upon seeing the police party got perplexed and tried to run away on his motorcycle, however, he was apprehended by Sub Inspector Mohan Singh. Thereafter upon asking, the said person disclosed his name as Pankaj Kumar Jatav (petitioner) s/o Rajesh Kumar r/o C-3/119, Sultanpuri, North West Delhi.

5. After following the due procedure, the search of petitioner and his *pithoo bag* was carried out, whereupon 9200 loose intoxicant tablets of white colour were recovered from the *pithoo bag* of petitioner. The recovered tablets were converted into parcel and sealed; and the said parcel as well as the motorcycle of petitioner was taken into police possession.

6. As per the status report, the samples prepared from the recovered intoxicant material were sent to the Forensic Science Laboratory, whereupon the report was received, wherein it was opined that the contents of sample of the said tablets were found to be '*Tramadol Hydrochloride*' and the average weight of each tablet came to be 376 mg. It is further stated in the status report that the petitioner was medically examined and his Dope

Test was got conducted from Civil Hospital, Samana, whereupon he was reported to be '*Tramadol Positive*', therefore, offence under Section 27 of the N.D.P.S. Act was added in the instant case on 03.08.2022.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case. It is submitted that the petitioner has no concern with the alleged crime and alleged recovery in the instant case is planted one. It is next stated that the version in the present FIR is in total contradiction with the actual facts, which are to the effect that on 30.07.2022 at about 8:00 P.M., the petitioner was arrested by the Punjab police officials and he was illegally detained till the evening of 31.07.2022. Learned counsel for the petitioner contends that even if the allegations levelled against the petitioner in the instant case are taken to be true then also there had been non-compliance of the mandatory provisions of the N.D.P.S. Act; and all the prosecution witnesses cited in the instant case are the official witnesses and no private or independent witness was joined by the police.

8. Learned counsel for the petitioner submits that the learned Judge, Special Court, Patiala has wrongly dismissed the application for regular bail filed on behalf of the petitioner, vide order dated 29.09.2022 (Annexure P-1). Learned counsel further submits that the petitioner is not involved in any other case and he has undergone actual custody in the instant case for a period of one year, four months and sixteen days (as on 17.12.2023); investigation in the case is complete, challan stands presented on 06.12.2022 and charges have been framed on 19.12.2022. It is stated that out of the total thirteen prosecution witnesses, only one prosecution witness, namely Assistant Sub Inspector Channa Ram, has been

examined-in-chief and is yet to be cross-examined; trial in the case is likely to take some 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. Learned counsel further submits that the petitioner is also willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. Accordingly, prayer for grant of regular bail is made.

9. 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. It is submitted that the intoxicant material recovered in the instant case 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 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. However, learned State counsel while referring to the custody certificate has submitted that there is no other case pending against the petitioner and he has undergone actual custody in this case for a period of one year, four months and sixteen days (as on 17.12.2023). It is also conceded by learned State counsel that investigation in the case is complete, challan stands presented, charges have been framed and out of the total thirteen prosecution witnesses, only one prosecution witness has been partly examined, i.e. examined-in-chief, by now.

11. 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.

12. Since the petitioner seeks grant of bail mainly on account of long custody, no criminal antecedents and trial not likely to conclude in near future, accordingly gainful reference can be made to judgments rendered by Hon'ble Supreme Court in “Chitta Biswas @ Subhas v. State of West Bengal” (Criminal Appeal No. 245 of 2020 dated 07.02.2020), “Nitish Adhikary @ Bapan v. State of West Bengal” (Special Leave(Crl.) No. 5769 of 2022), “Shariful Islam @ Sarif v. State of West Bengal” (Special Leave to Appeal (Crl) 4173 of 2022 dated 04.08.2022), “Karnail Singh v. State of Odisha” (Criminal Appeal No. 2027 of 2022 dated 22.11.2022), “Karim Adaldar v. State of West Bengal” (Special Leave to Appeal (Crl.) No. 8653 of 2022), “Dheeraj Kumar Shukla Vs. State of Uttar Pradesh” (SLP No.6690 of 2022 dated 25.01.2023) and “Hasanujjaman and others Vs. The State of West Bengal” (Special Leave Appeal (Crl.) No(s).3221 of 2023 dated 04.05.2023).

13. Concededly, the alleged recovery in this case falls under the category of 'commercial quantity' and bar of Section 37 of the N.D.P.S. Act is attracted, however, while dealing with Section 37 *ibid*, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence.

14. In the peculiar facts and circumstances of the present case and on an assessment of material on record especially, the fact that petitioner is not involved in any other case, more so under the N.D.P.S. Act, and the alleged recovery having been effected from a *pithoo* bag, I am of the *prima*

facie view at this stage that the petitioner may not have committed the alleged offence and he is unlikely to commit an offence under the N.D.P.S. Act, while on bail.

15. Furthermore, the petitioner is in custody for a period of one year, four months and sixteen days (as on 17.12.2023). Investigation in the case is complete, challan stands presented on 06.12.2022 and even charges have been framed on 19.12.2022. Out of the total thirteen prosecution witnesses, only one prosecution witness has been examined-in-chief, by now. The petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

16. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, it is observed that the State/Prosecuting Agency/State police shall be at liberty to observe the behaviour of the petitioner during the bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

17. In view of the above discussion, present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the

petitioner shall inform the concerned Station House Officer about his address at which he intends to reside during the pendency of case/trial and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish his telephone number to the concerned Station House Officer. He would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also appear before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial.

18. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.1,00,000/- and submit the same with the trial Court. The same would be liable to be forfeited as per law, in case the petitioner remains absent from trial without any sufficient cause.

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. The petition is accordingly disposed of.

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

18.12.2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No