

Neutral Citation No.- 2023:PHHC:073180

213

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-M-47230-2022
Date of decision: 19.05.2023

ZUBBER ALIAS JUBER

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Ayna Vasudeva, Advocate
for the petitioner.

Mr. Athar Ahmed, DAG, Punjab.

JAISHREE THAKUR, J. (Oral)

1. This is a petition filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No.0066 dated 23.06.2020, under Section 22 of the NDPS Act, 1985 and Sections 473 and 482 of the IPC, registered at Police Shambu, District Patiala, Punjab.

2. Learned counsel for the petitioner would argue false implication. It is contended that the petitioner herein was the driver of the motorcycle and he had give lift to one Naushad, co-accused under the said FIR. It is submitted that the petitioner had no knowledge that Naushad was carrying the alleged contraband as recovered. She would further submit that a Coordinate Bench of this Court in **Prahlad Singh versus State of Haryana, CRM-M No.51767 of 2019**, decided on **08.01.2020**, has allowed the concession of regular bail to the petitioner therein on similar grounds when the alleged contraband was

Neutral Citation No.- 2023:PHHC:073180

recovered between the driver of the motorcycle and the pillion rider. In those circumstances, it was held that the question as to whether the petitioner can be said to be in conscious possession of the contraband, would be the matter of trial.

3. At this stage, learned counsel for the petitioner would also point out that the petitioner is in custody since 23.06.2020 and the trial is not proceeding. She submits that total 12 prosecution witnesses have been cited, out of which, 2 have been examined and 2 others partially examined. She would also rely upon the zimni order dated 08.05.2023 passed by the trial Court, wherein the Additional Sessions Judge, Patiala has noted that two PWs did not come despite service of summons and now they have been sought to be summoned through bailable warrants in the sum of Rs.5000/- each with one surety of like amount for 30.05.2023. She would also argue that the delay in the trial is affecting fundamental right of the petitioner under Article 21 of the Constitution of India.

4. Learned State counsel would oppose the grant of bail to the petitioner and would argue that the recovery from the petitioner and co-accused Naushad is of more than 12000 intoxicant tablets, which is a larger quantity than what was recovered in the matter of Prahlad Singh (supra). However, he is not in a position to dispute the fact that there is no other case under the NDPS Act against the petitioner and that his incarceration in the case is since June, 2020. He would further argue that Section 37 of the NDPS Act is a stringent provision that does not permit bail to be given under the said Act.

5. I have heard learned counsel for the parties and have also perused the case file as well as case law cited and zimni order passed by the Additional Sessions Judge, Patiala on 08.05.2023.

Neutral Citation No.- 2023:PHHC:073180

6. As per the said FIR, the recovery of more than 12000 intoxicant tablets/capsules was from a bag, which was kept between the petitioner, who was the driver of the motorcycle and the pillion rider. The question of conscious possession would have to be decided by the trial Court. In similar circumstances, even though the quantity is larger than what was recovered in that case, the concession of regular bail has been allowed by this Court in Prahlad Singh's case (supra). Moreover, the Supreme Court in *Dheeraj Kumar Shukla versus The State of Uttar Pradesh* passed in *Special Leave to Appeal (Crl.) No.6690 of 2022*, on *25.01.2023*, held that where a person is incarcerated for the last two and a half years, the condition of Section 37 of the NDPS Act can be dispensed with when the trial is being delayed. It is further noticed that the delay in concluding the trial is not attributable to the petitioner in any manner whatsoever since the petitioner is in custody and it is the prosecution who is lacking in adducing its witnesses.

7. Without commenting on merits of the case and keeping in view of the fact that the petitioner is in custody since 23.06.2020 and the trial is likely to take time to conclude, no useful purpose would be served in keeping the petitioner behind bars any longer. The instant petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail and surety bonds to the satisfaction of trial Court/Duty Magistrate concerned.

8. However, any observation made herein shall not be construed to be an expression on the merits of the case.

(JAISHREE THAKUR)
JUDGE

19.05.2023

Chetan Thakur

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No