

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58920 of 2023

Date of Decision:16.12.2023

Sandesh

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. R.P.S. Jammu, Advocate for the petitioner.
Mr. Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J. (Oral)

Status report by way of affidavit of Shri Sajjan Singh, HPS, Deputy Superintendent of Police, Hodal has been filed on behalf of the respondent- State along with the custody certificate.

2. By way of this petition filed under Section 439 Cr.P.C., petitioner prays for his release on regular bail in case FIR No.391 dated 08.08.2022 registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Hodal, District Palwal.

3. This is the third petition for the purpose. Learned Senior Counsel submits that earlier two petitions bearing CRM-M-14814 of 2023 and CRM-M-33152 of 2023 were dismissed as withdrawn vide orders dated 19.05.2023 and 18.07.2023, copies of which have been placed on record.

4. As per prosecution allegations, on the basis of secret information, 23 packets containing total weight of 64 kg 200 grams of **Ganja Patti** were recovered from a Canter concealed under a tin shed. The said Canter was being driven by co-accused Suraj, whereas petitioner – Sandesh was passenger therein.

5. Learned Senior Counsel for the petitioner contends that the petitioner has been falsely implicated, in as much as he is neither the owner

nor the driver of the truck. He had simply taken lift from the co-accused and was not aware as to what was loaded in the truck. Learned counsel further contends that ***Ganja Patti*** i.e., leaves of Ganja are excluded from the definition of “Cannabis” (hemp) as per Section 2(iii)(b) of the NDPS Act. Besides, petitioner is not involved in any such case. He is in custody for the last more than 01 year 04 months and 07 days and as trial may take long time to conclude, so he be allowed bail.

6. Learned State Counsel has opposed the petition by pointing towards the commercial category of the contraband as recovered from co-accused Suraj and that the petitioner was sitting in the same truck. Learned Counsel contends that as per the disclosure statement of co-accused Suraj-driver of the Canter, he had brought the Ganja Patti from Vishakhapatnam at the instance of the petitioner, who had offered ₹10,000/- per round to bring the contraband.

7. However, learned State Counsel concedes that the petitioner is not involved in any other case. Learned State Counsel could not point out towards any other incriminating circumstance against the petitioner except the disclosure statement of co-accused to the effect that he had brought the contraband at the instance of the petitioner. Apart from this, custody certificate reveals that petitioner is in custody for the last 01 year 04 months and 07 days with no criminal antecedents.

8. Although Section 37 of the NDPS Act, bars grant of bail in such like cases, unless certain specified conditions are fulfilled but at the same time, the long custody of the petitioner cannot be ignored. Out of 17 witnesses cited by the prosecution, only 06 have been examined so far as per the status report and thus, trial may take long time to conclude. In the circumstances, Section 37 of the NDPS Act, is liable to be balanced with

Article 21 of the Constitution of India providing for fundamental right of life and liberty of which speedy trial is a part.

9. In “*Union of India v. K.A. Najeeb*”, (2021) 3 SCC 713, it has been observed by Hon’ble Supreme Court that it has been clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial.

10 Besides, in a decision rendered by Hon’ble Supreme Court in *Mohammad Salman Hanif Shaikh Vs. The State of Gujarat, Special Leave to Appeal (Crl.) No.5530 of 2022*, decided on 22.08.2022, appellant had spent about 2 years in custody and trial was likely to take time. The case of the prosecution was that recovery of commercial quantity of contraband was effected from the appellant. However, considering the custody period, Hon’ble Supreme Court was pleased to grant regular bail.

In *Chitta Biswas @ Subhas Vs. The State of West Bengal, Criminal Appeal No.245/2020*, decided on 07.02.2020, Hon’ble Supreme Court was pleased to grant concession of bail to the appellant in a case where the custody period was 1 year and 7 months approximately despite the fact that recovery was of commercial quantity.

In yet another case titled *Gopal Krishna Patra @ Gopalrusma Vs. Union of India, Criminal Appeal No.1169 of 2022*, decided on 05.08.2022, the custody period of the appellant therein was approximately 2 years and 1 month. Considering the length of custody, concession of bail was granted.

In *Nitish Adhikary @ Bapan Vs. The State of West Bengal, Special Leave to Appeal (Crl.) No.5649/2022*, decided on 01.08.2022, the appellant therein was in custody for the last 1 year and 7 months in a case

involving recovery of commercial category of contraband. The bail was granted by Hon’ble Supreme Court. In that case, Hon’ble Supreme Court also made reference of Section 37 of the NDPS Act, but the bail was granted after considering the custody period.

11. Having regard to all the afore-said facts and circumstances, but without commenting anything on the merits of the case, the present petition is allowed. Petitioner is directed to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/ Duty Magistrate concerned, on usual terms and conditions.

December 16, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No