

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 1st March, 2023

Pronounced on: 14th March, 2023

+ BAIL APPLN. 941/2022 & CRL.M.(BAIL) 330/2022

HARVEER GIRI Petitioner

Through: Mr. Sandeep Sharma, Adv.

versus

STATE Respondent

Through: Ms. Richa Dhawan, APP for the
State with Insp. Surender Singh, PS
AATS/North and SI Hari Om, PS
Special Staff North.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. By this petition the petitioner seeks regular bail in FIR No.368/2020 dated 24th October, 2020 PS Timarpur under Sections 20/25/29 NDPS Act and in the alternative interim bail in terms of orders dated 13th December, 2021 and 22nd February, 2022 passed by the Hon'ble Supreme Court in SLP (Crl.) No. 8164-8166/2021 and other similarly placed petitions. The petitioner was arrested on 25th October, 2020 and has been in custody since.

2. As per the case of the prosecution based on information received in the office of Special Staff, North District, Delhi, that 3 persons viz. Harveer, Ravi Thakur and Sachin aged about 30 years belonging to U.P. would supply huge quantities of *ganja* from Malkangiri (Odisha) to

different places in Delhi and U.P. They were expected to come through Outer Ring Road towards Timarpur in a white coloured *Mahindra Xylo* Car No. UP 16 DT 1019 between 5 to 6 p.m. Based on the information, senior officials were informed and ACP ordered the inspector to prepare a raiding party. A dedicated police team of special staff was employed who laid a trap on the outer ring road. The said car was intercepted with registration No. UP16DT1019 in which two accused, Harveer, the petitioner herein, and Ravi Thakur were found. Pursuant to search of these accused persons and the car, 10 packets of *ganja* in two plastic bags weighing a total of 51.154 kg was recovered. The same was seized following due procedure and case was registered. Both the accused were arrested and upon interrogation Ravi Thakur disclosed that he had been involved in bringing this *ganja* from Satinder Singh @ Sachin of village Ratanpuri, District Muzaffarnagar, U.P. to supply to a local peddler of Majnu Ka Tilla, Delhi. Later Satinder Singh @ Sachin was arrested from his house in U.P. on 25th October, 2020, who disclosed that he purchased 235 kg of *ganja* from Sonu, a supplier in Raipur, Chhattisgarh which was brought in a truck No. UP37AT2850. Later Sonu Chaturvedi was also arrested at the instance of accused Satinder Singh @ Sachin when they came to receive the payment for *ganja*. The aforementioned truck used in transportation from Raipur to Ratnapuri, U.P. was recovered and seized.

3. On 9th November, 2020 samples of contraband were taken and sent to FSL, Rohini for examination and opinion. The results were received and the report was of *ganja*. The ownership details of the aforesaid car were obtained and belonged to the petitioner as the registered owner. Charge sheet was filed on 8th February, 2021 and charges are yet to be framed.

4. The learned counsel for the petitioner in support of the bail petition contends that the petitioner has been falsely implicated for the following reasons:

a. As per the FIR the recovery was from *Mahindra Xylo* Car No. UP16DT1019 being driven by the petitioner and accompanied by Ravi Thakur. The car was intercepted at 4:55 p.m., the ACP was called and in his presence the car was searched, the contraband recovered and the ACP left the spot at 6:45 p.m., as per the case of the prosecution. At 11:00 p.m. HC Ansar Khan when to PS Timarpur in the said car along with the *rukka* and after registration of the FIR, returned to the spot at 12:15 a.m. on 25th October, 2020 with the copy of the FIR and handed it to SI Chaitanya Abhijeet. As per the counsel for the petitioner, on 29th October, 2020 the prosecution informed the Ld. Special Judge that recovery was made from *Mahindra Xylo* Car which is evident from the record of remand as well as the application for PC remand of accused Sonu Chaturvedi dated 26th October, 2020 and 29th October, 2020. However while filing the charge-sheet, the prosecution changed the story from recovery being made from a *Chevrolet Enjoy* Car. The only explanation given was that apparently SI Chaitanya Abhijeet figured from the vehicle number that it was a *Chevrolet Enjoy* Car and recorded the statement to this effect at 12:20 a.m. on 25th October, 2020 and also mentioned the vehicle as 'Enjoy' in the site plan prepared. The learned counsel for the petitioner assails this explanation is not sustainable since DD No.16A on 25th October, 2020, recorded at 3:29 a.m. (as per record under Section 57 NDPS Act) had the reference of the car as *Mahindra Xylo* Car as also till 29th October, 2020 the remand order and application was mentioning the car as *Mahindra Xylo* Car.

b. The learned counsel for the petitioner also cast a doubt on the timing of registration of the FIR. As per the case of the prosecution the FIR was

registered at 11:33 p.m. and a copy was brought by HC Ansar Khan at 12:15 a.m. to the spot on the intervening night of 24th and 25th October, 2020. However as per the CCTNS record the FIR was frozen at 4:26 a.m. on 25th October, 2020. The learned counsel for the petitioner contended that a printout of the FIR is only possible after it has been entered into the CCTNS system and has been frozen at a particular time. This, he says, is a serious infirmity in the case of the prosecution.

c. The learned counsel for the petitioner drew attention to the fact that appearance of *Mahindra Xylo* Car and *Chevrolet Enjoy* Car are completely different and even then, nobody was able to identify the make and model of the car. These discrepancies cast serious doubt on the allegation and bring the case of the petitioner within the exception provided under Section 37 (b) (ii) NDPS Act and make him eligible for bail.

d. The petitioner does not have any previous involvement and has clear antecedents and therefore, is entitled for bail on that account as well.

e. As per the learned counsel for the petitioner the charge-sheet was filed on 9th February, 2021 without the FSL report. Accordingly the petitioner moved an application for statutory bail on 23rd October, 2021 but it was dismissed *vide* order dated 29th November, 2021. On 10th January, 2022 another application was filed on account of non-filing of the FSL report placing reliance on orders passed by the Hon'ble Supreme Court in SLP (Crl.) Nos.8164-8166/2021,8718/2021 and 8496-8497/2021.

f. The petitioner therefore sought benefit of the interim bail granted by the Hon'ble Supreme Court to petitioners who were similarly accused under the NDPS Act and where charge-sheet had been filed without the FSL report. He has further adverted to the judgments passed by the Hon'ble High Court of Punjab and Haryana *inter alia* in ***Rohtash @ Raju v. State of Haryana***, CRR No.933/2022 dated 1st June, 2022 and in

Mukesh Pal @ Makhan v. State of Haryana, CRR No.1046/2022 dated 29th November, 2022 granting default bail based on the fact that no FSL report had been filed with the charge-sheet.

5. The Ld. APP for the State refuted these contentions and stated that a DD entry had been made at 11:33 p.m. for starting the investigation and which had ultimately resulted in the FIR being lodged, the CCTNS procedure being merely for an entry into the computer system. The reference to the FIR to which the learned counsel for the petitioner adverted to, stating that a computerised copy of the FIR was sent through HC Ansar Khan also states that the said copy of FIR was checked and frozen and sent to the senior officer and therefore, there could be no issue in that regard. Also it was submitted that throughout the recovery, seizure and investigation, the registration number of the car was consistent and there was only a mistake in describing the make of the car due to similarity in the logos, and hence, cannot dilute the recovery since it was that car with the said registration, which was seized by the police. Additionally the truck had also been seized by the police and therefore the case of the prosecution was based on firm facts.

6. As regards granting benefit of the interim orders of the Hon'ble Supreme Court, a status report has been filed which noted that in *inter alia* the following cases the Hon'ble Supreme Court had granted interim bail to the respective petitioners till finalisation of the legal issue regarding section 167(2) Cr.P.C. and whether charge sheet is complete without an FSL report: ***Mohd. Arbaz v. State of NCT of Delhi***, SLP (Crl.) No.8164-8166/2021, ***Kulbir Singh v. The State of Haryana***, SLP (Crl.) No.8718/2021, ***Kripal Singh v. The State of West Bengal***, SLP (Crl.) No.532/2022, ***Md. Kamal Hossain v. The State of West Bengal***, SLP (Crl.) No.2666/2022, ***Jagjeet Singh v. State of Haryana***, SLP (Criminal)

No.6876-6877/2022, *Sameer v. State of Kerala*, SLP (Crl.) No.8496-8497/2021.

7. However it was stated by the Ld. APP that the detailed facts of these cases were not known, even though the learned counsel for the petitioner had also presented a table stating that most of these cases also related to commercial quantities.

8. Before considering the issue of regular bail on merits, it is important to assess the impact of the directions of the Hon'ble Supreme Court granting interim bail to the petitioners in the aforementioned petitions. It is noted that these are all interim orders and the issue of default bail, in cases where charge sheet has been filed without FSL/chemical examiner's report, is yet to be determined by the Hon'ble Supreme Court. The legal issue therefore still awaits confirmation by the Hon'ble Supreme Court and is not a legally settled principle on which this Court can rely upon and follow. Also the interim orders by the Hon'ble Supreme Court are relatable to facts of the particular cases where they have been passed and cannot serve as a precedent to be followed by this Court. Ld. APP has argued that in this matter, even though the charge sheet was filed on 9th February, 2021, the FSL report was received on 24th March, 2021 and supplementary charge sheet had been filed later on 12th January, 2022. Further there was no doubt relating to registration numbers of car and truck which were seized and were consistent throughout the documentation of the investigation. Further, CDR records had been examined and were corroborating the involvement of the co-accused in this transaction. Therefore, it would be difficult to draw a conclusion in favour of the petitioner for bail and that the petitioner was not guilty of an offence, thereby satisfying one of the twin conditions of section 37 (b) (ii) NDPS Act.

9. Besides, the presumption under section 54 NDPS Act would apply to the petitioner and would have to be rebutted and proved in trial. Also, as regards the issue of the factual discrepancy of the car description or even the timing of presenting the FIR copy would be all elements which would have to be confronted by the defence during trial. *Prima facie*, the prosecution has been consistent regarding the registration number, engine number and chassis number of the car seized and therefore the doubt raised merely on the description of the car may not suffice to cross the threshold of section 37 NDPS rigour, besides these aspects have been taken note of and corrected in the charge-sheet. Also the substance was found to be “ganja” as per the field testing kit and therefore the issue of the FSL reports being filed later after the main charge-sheet is an aspect which would not simpliciter give right to default bail to the petitioner. At this stage, where a commercial quantity of contraband has been recovered from the possession of the petitioner and has been established to be prohibited, the question of grant of bail at this stage may not arise, since the threshold of section 37 NDPS cannot be overcome basis the contentions of the petitioner.

10. Accordingly, the petition is dismissed. Pending applications (if any) are disposed of as infructuous.

11. Order be uploaded on the website of this Court

(ANISH DAYAL)
JUDGE

MARCH 14, 2023/sm