IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
Cr. MP(M) No. 2400 of 2024
Reserved on: 13.12.2024
Decided on : 24.12.2024

Ram Singh ....Petitioner

Versus

NCB ….Respondent

Coram
Hon'ble Mr. Justice Sushil Kukreja, Judge
Whether approved for reporting?[1]

For the petitioner: Mr. Yashveer Singh Rathore, Advocate.
For the respondent: Mr. Ashwani Pathak, Senior Advocate with Mr. Dev Raj, Advocate.

Sushil Kukreja, Judge

By way of instant petition filed under Section 439 of the Code of Criminal Procedure (for short "Cr. P.C."), the petitioner is seeking bail in case FIR No.74/2022, dated 20.10.2022, under Sections 20 & 29 of the Narcotic Drugs and Psychotropic Substances Act (for short "the Act") registered with Narcotics Control Bureau (NCB), Sub Zone Mandi, H.P.

2. The prosecution story, in brief, is that a team of NCB received a secret information that two persons, namely,

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1. Whether reporters of Local Papers may be allowed to see the judgment?

Som Nath and Ram Singh (petitioner herein) were involved in trafficking of *charas*. On the basis of said information, the NCB Mandi team reached at Bajaura bypass on 20.10.2022 and at about 6:30 am, a white coloured Maruti 800 bearing registration No. PB-07G-2400 came from Bhuntar side, which was stopped by the NCB team and the persons sitting in the said vehicle, were asked to disclose their identity. One person disclosed his name as Som Nath and other as Ram Singh (petitioner herein). After ascertaining their identities, the Investigating Officer tried to associate the persons walking on the road, as witnesses, in the proceedings, but they refused. thereafter, the Investigating Officer called Pradhan of Gram Panchayat Hat Bajaura namely Barkat Ali and Ward Member Arun Sharma and associated them as independent witnesses in the proceedings. After that a local mechanic, namely Jogu Ram, was called for opening the parts of the vehicle in the presence of both the accused persons as well as the independent witnesses. During search, 13 packets wrapped with brown coloured tape were recovered from the front mudguard, upper side of tyres,

which were containing charas. On weighment, the recovered charas/cannabis was found to be 4.424 Kgs. Thereafter, the police completed all the codal formalities and both the accused persons were arrested.

3. The bail application has been filed by the petitioner on the ground that he is innocent and has been falsely implicated in the present case. The learned counsel for the petitioner contended that the petitioner is in judicial custody since 20.10.2022 and the trial is not going to be completed in near future, therefore, the petitioner deserves to be released on bail, as no fruitful purpose would be served by keeping him behind the bars for an unlimited period. He further contended that there is inordinate delay in conclusion of trial, which infringes upon the right of speedy trial of the petitioner, as such, he is entitled to be released on bail on the ground that his right of speedy trial has been violated.

4. Per contra, the learned Senior Counsel for NCB opposed the bail application on the ground that keeping in view the gravity of the offence alleged to have been committed by the petitioner and the quantity of the recovered

contraband, i.e. commercial quantity, he is not entitled to be enlarged on bail. He further contended that the present bail application filed by the petitioner is the successive one, which is liable to be dismissed as there is no change in circumstances after the dismissal of the earlier bail application.

5. Pertinently, the present is the successive bail application filed by the petitioner. Earlier, the petitioner had preferred a bail application being Cr. MP (M) No. 2896 of 2023 before this Court, seeking regular bail, which came to be dismissed vide order dated 26.12.2023, as this Court was of the opinion that quantity of the charas/cannabis recovered from the petitioner was 4.424 Kgs, which is a commercial quantity and he has failed to satisfy the conditions, as provided under Section 37 of the NPDS Act.

6. It is a well settled principle of law that when the successive application comes before the Court, the Court would be very conscious while considering the same. As held by the Hon'ble Apex Court in ***State of Maharashtra*** Vs. ***Captain Buddhikota Subha Rao, AIR 1989 SC 2292,*** that

successive bail application can be entertained by the Court when substantial change is established by the accused, which would entitle him for getting bail in successive bail application. The Court should not pass the order of releasing him on bail in successive bail application merely establishing some cosmetic change between time gap of two applications. There should be drastic change during the period between two applications, which would entitle the accused for bail.

7. In ***State of Tamilnadu vs. S.A.Raja (2005) 8 SCC 380,*** Hon'ble Supreme Court has categorically held that when there are no changed circumstances, the successive bail application is nothing but review of the earlier application which cannot be maintainable. The relevant portion of the aforesaid judgment reads as under:-

> *"9. When a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of res judicata are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents."*

8. In ***State of M.P vs. Kajad (2001) 7 SCC 673*** Hon'ble Supreme Court held that:

> *"8. It has further to be noted that the factum of the rejection of his earlier bail application bearing Misc. case No. 2052 of 2000 on 5.6.2000 has not been denied by the respondent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa & Anr. and various other judgments".*

9. In the case of ***Kalyan Chandra Sarkar, vs Rajesh Ranjan (2004) 7 SCC 528*** Hon'ble Supreme Court held as follows:

> *20."Before concluding, we must note though an accused has a right to make successive applications for grant of bail, the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications……"*

10. In ***Virupakshappa Gouda and another vs. State of Karnataka and another (2017) 5 Supreme Court Cases 406,*** it is held that:

> *12. On a perusal of the order passed by the learned trial Judge,we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to Say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge- sheet for trial of the accused persons. As is*

> *further demonstrable, the learned trial Judge has remained absolutely oblivious of the fact that the appellants had moved the special leave petition before this Court for grant of bail and the same was not entertained. Be it noted, the second bail application was filed before the Principal Sessions Judge after filing of the charge-sheet which was challenged in the High Court and that had travelled to this Court. These facts, unfortunately, have not been taken note of by the learned trial Judge……."*

11. Thus, it is the settled position of law that successive bail applications are permissible under the changed circumstances but the change of circumstances must be substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. Without the change in the circumstances, the subsequent bail application would be deemed to be seeking review of the earlier rejection order which is not permissible under criminal law. While entertaining such subsequent bail applications, the Court has a duty to consider the reasons and grounds on which the earlier bail application was rejected and what are the fresh grounds which persuade it warranting the evaluation and consideration of the bail application afresh and to take a view different from the one taken in the earlier application. There

must be change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete.

12. This Court, confronted Mr. Yashveer Singh Rathore, Advocate, learned counsel for the petitioner, to point out the change in circumstances after the dismissal of the earlier bail application. However, except the contention that there is inordinate delay in conclusion of trial, which infringes upon the right of speedy trial of the petitioner as he is in custody since 20.10.2022, the learned counsel for the petitioner, has failed to point out any substantial change in the circumstances after the dismissal of his earlier bail application, which would entitle the petitioner for release on bail. In the facts and circumstances of the present case, this contention of learned counsel for the petitioner cannot be accepted, as the trial has already commenced and out of total 09 witnesses cited by the prosecution, 05 witnesses have already been examined and now the case is listed for recording the statements of two prosecution witnesses on

24.02.2025, therefore, there is every likelihood of the completion of trial in near future.

13. Hence, in view of the facts and circumstances of the present case, this Court is of the view that after the dismissal of the earlier bail application, there is no substantial change in the circumstances which would entitle the petitioner for releasing him on bail. Therefore, in absence of any changed circumstances, the present successive application for bail cannot be entertained. Hence, for the reasons mentioned above, the bail application filed by the petitioner is dismissed.

14. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein. However, as the petitioner is behind the bars since 20.10.2022, the learned trial Court is expected to conclude the trial as expeditiously as possible.

Pending application(s), if any, stands disposed of.

(Sushil Kukreja)
Judge

December 24, 2024
(raman)