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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5600-2022 (O/M)
Date of decision : 04.04.2024

Ashok Chopra

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Vishal Malik, DAG Haryana.

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HARSH BUNGER, J.

1. This is a second petition filed under Section 439 Cr.P.C. on behalf of petitioner (Ashok Chopra) for grant of regular bail in case bearing FIR No. 236 dated 05.07.2020, under Sections 18 and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS. Act'), registered at Police Station Sadar, Fatehabad.

2. The first petition filed under Section 439 of Code of Criminal Procedure (CRM-M-36829-2020) by petitioner was withdrawn vide order dated 17.11.2020.

3. Custody certificate dated 03.04.2024 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Briefly, the aforesaid case FIR was registered on the basis of a *ruqa* prepared by Sub Inspector Kishori Lal, who averred that on 04.07.2020, when he

was present in Crime Investigation Branch, Fatehabad then a Special Messenger informed him that a truck bearing No. HR-62-7926 loaded with iron pipe/angles etc. was going to Sirsa from Jamshedpur wherein two persons were travelling, one driver namely Ashok Chopra (petitioner), who was having 10 kg. opium and another was cleaner; after some time, the said truck would reach near Dhani Chanan and said 10 kg opium would be delivered to Brahmjeet Singh and said Brahmjeet Singh would come near Dhani Chanan in his car bearing No. HR24-R-8818 to take the opium. If secret surveillance be done near Dhani Chanan then 10 kg opium could be recovered from Ashok Chopra, driver of said truck. Considering the secret information to be reliable, a report was reduced into writing in Roznamacha, as per Section 42 of NDPS Act and the information was sent to DSP Daljit Singh through EHC Subhash Chander and thereafter, he (IO) alongwith other police officials reached at Dhani Chanan on Sirsa Road for surveillance. In the meanwhile, a truck bearing No. HR62-7926 was seen coming from Hisar side, which stopped near Rajwara Bridge of service road at Dhani Chanan. After some time, a car bearing No. HR24-R-8818 came from Sirsa side and stopped near the truck, from which a person came out and started conversation with the driver of said truck from window side, whereupon he (IO) alongwith other fellow members surrounded the truck and found two persons sitting in the cabin of the truck. All the persons present there were apprehended, who disclosed their names as Ashok Chopra (driver), Buta Singh (cleaner) and Brahmjeet Singh. On being suspicious of having some intoxicant substance with them, separate notices under Section 50 of NDPS Act were served upon those three persons and their option of getting themselves searched before a Gazetted Officer or Illaqa Magistrate was also put to them, upon which they opted to get themselves searched from a Gazetted Officer, whereupon DSP Daljeet Singh was

informed and he reached at the spot at 2.45 am in official vehicle.

5. After following the due procedure, the search of all three persons and the truck was conducted and a plastic bag was found lying in the cabin of the truck near the driver seat. On checking the said plastic bag, opium was recovered, which on weighing was found to be 10 kg. The recovered contraband was sealed and the same was taken into police possession.

6. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the instant case. It is submitted that there is unexplained delay in reporting the matter to the police and the instant FIR has been lodged with ulterior motive. It is further contended that nothing has been recovered from the petitioner.

7. Learned counsel further submits that the petitioner has undergone actual custody in the instant case for a period of 3 years, 8 months and 27 days (as on 03.04.2024); investigation in the case is complete, challan stands presented 03.02.2021; charges have been framed on 04.10.2022 and no other case under NDPS Act is pending against the petitioner. It is stated that out of the total 32 prosecution witnesses, only 6 prosecution witnesses have been 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 the bars for indefinite period. Learned counsel for the petitioner submits that the learned Additional Sessions Judge, Fatehabad has wrongly dismissed the application for regular bail filed on behalf of the petitioner vide order dated 29.10.2020. 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. As regards the offence under Section 27-A of NDPS Act is concerned, learned counsel for the petitioner relies upon the judgment rendered by this court in **CRM-M-50808-2022** titled as ***Pooja alias Pooja Rani Versus State of Punjab***, decided on 30.11.2022. Accordingly, prayer for grant of regular bail is made.

8. 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 in the instant case, the recovery of 10 kg. of opium from the petitioner, falls under the category of 'commercial quantity' and thus, rigors of Section 37 of NDPS Act are attracted in this case. It is also submitted by learned State counsel that in case, the petitioner is extended the benefit of regular bail then there is every likelihood that he may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, prayer for dismissal of instant petition has been made.

9. Further, learned State counsel while referring to the custody certificate has submitted that no other case under NDPS Act is pending against the petitioner and he has undergone actual custody in this case for a period of 3 years, 8 months and 27 days (as on 03.04.2024). It is also conceded by learned State counsel that investigation in the case is complete, challan stands presented and charges have also been framed. It is also not disputed that till date, out of 32 prosecution witnesses, only 6 prosecution witnesses have been examined.

10. I have heard learned counsel for the parties and perused the paper book as well as custody certificate dated 03.04.2024 of the petitioner, filed by State of Haryana.

11. Hon'ble the Supreme Court in the case of ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, SLP (Criminal) No. 6690/2022 decided

on 25.01.2023 observed that in case of long custody period, involving quantity recovered to be of commercial nature, where the trial is yet to commence, though charges had been framed, the condition of Section 37 of NDPS Act can be dispensed with. In the case of ***Bhupender Singh Versus Narcotic Control Bureau*** (2022) 2 RCR (CrI.) 706, the Division Bench of this Court observed with regard to achieving balance between right to speedy trial guaranteed under Article 21 of the Constitution of India and rigors of Section 37 of NDPS Act. Similarly, in the case of ***Shariful Islam alias Sarif Versus The State of West Bengal*** SLP (CrI.) No. 4173/2022, decided on 04.08.2022, Hon'ble the Supreme Court granted bail to the petitioner in a case of recovery of commercial quantity of contraband, considering incarceration for over 1 year and 6 months and there being no likelihood of completion of trial in the near future. In the case of ***Munasi Masih Versus State of Punjab***, CRM-M-31504-2022, decided on 06.02.2023, this Court granted bail to a first offender from whom commercial quantity of contraband had been recovered and only 2 out of 13 PWs have been examined, by observing that in view of delayed trial, the rigors of Section 37 of NDPS Act can be diluted to an extent and the petitioner can be granted bail, keeping in mind the right to a speedy trial as envisaged under Article 21 of the Constitution of India.

12. As regards the offence under Section 27-A of NDPS Act is concerned, in ***Pooja's*** case (supra), it was observed that to attract the provisions of Section 27-A of NDPS Act, there has to be substantial material to indicate any degree of continuity and regularity in drug dealing, so as to enable the Court to form an opinion that the accused was trafficking in drugs. The said fact would be a subject matter of trial.

13. Considering the aforesaid facts and circumstances and the fact that the petitioner is in custody for a period of 3 years, 8 months and 27 days (as

on 03.04.2024); investigation in the case is complete, challan stands presented on 03.02.2021 and even charges have been framed on 04.10.2022, however, the fact remains that during this long period, out of 32 prosecution witnesses, only 6 prosecution witnesses have been examined so far, therefore, trial in the case is likely to take some time to conclude. As per custody certificate, no other case under NDPS Act is pending against the petitioner.

14. 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.

15. In view of the above discussion, present petition is allowed and the petitioner (Ashok Chopra) 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.

16. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs. 2,00,000/- 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.

17. 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.

18. The petition is accordingly disposed of.

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

(HARSH BUNGER)
JUDGE

04.04.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No