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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-6945-2024 (O/M)

Date of decision : 08.04.2024

Gurdeep Singh alias Vicky

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Jasvir Singh Dhaliwal, Advocate  
for the petitioner.

Mr. Sartaj Singh Gill, Senior DAG Punjab.

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HARSH BUNGER, J.

1. This is second petition filed under Section 439 Cr.P.C. on behalf of petitioner (Gurdeep Singh alias Vicky) for grant of regular bail in case FIR No. 4 dated 05.01.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS. Act'), at Police Station Moonak, District Sangrur.

2. The first petition filed under Section 439 of Code of Criminal Procedure (CRM-M-13591-2023) by petitioner was dismissed as withdrawn, vide order dated 27.04.2023 (Annexure P-5).

3. Status report dated 18.03.2024 by way of affidavit of Mr. Parminder Singh, PPS, Deputy Superintendent of Police, Sub Division, Moonak, District Sangrur and custody certificate dated 17.03.2024 of the petitioner have already been filed, which are on record.

4. Briefly, the aforesaid case FIR was registered on the basis of a *ruqa* prepared by ASI Jagjit Singh, who averred that on 05.01.2022, when he alongwith other police officials was present at Old Bus Stand, Moonak, then at about 08.15 am, he received an information from a special informer that Gurdeep Singh alias Vicky (petitioner herein), is used to sell the intoxicant tablets while moving, he was standing in wait for selling the intoxicant tablets at T-Point Balran Road, Moonak. It was informed that if a raid is conducted then said Gurdeep Singh alias Vicky could be caught with intoxicant tablets. Considering the said information to be reliable, ASI Jagjit Singh contacted the SHO Police Station Moonak and apprised him about the information and also asked him (SHO) to send another competent official/investigating officer at the spot.

5. Pursuant to secret information, ASI Balbir Singh raided at T-Point Balran Road, Moonak; where one person was seen standing with a polythene envelope in his hands, who on seeing the police party, got nervous and tried to fled away after throwing the polythene envelope on the ground, due to which the strips of intoxicating tablets scattered on the ground. However, he was caught by police party; who on interrogation, disclosed his name Gurdeep Singh alias Vicky. When the strips of tablets scattered on the ground were collected and counted, the same were found to be 1500 intoxicant tablets of Alprasaft-0.5. The intoxicant tablets were 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 contended that no recovery has been effected from the petitioner, rather the recovery of intoxicating tablets has been planted on the petitioner.

7. Learned counsel further submits that the petitioner has undergone actual custody in the instant case for a period of 2 years, 2 months and 10 days

(as on 17.03.2024); investigation in the case is complete; challan stands presented on 30.06.2022; charges have been framed on 21.07.2022 and out of 12 prosecution witnesses, only 3 witnesses have been examined till date, therefore, 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 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 willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) also before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing. 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 1500 intoxicant tablets from the petitioner, falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the 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. Further, learned State counsel while referring to the custody certificate has submitted that in addition to this case, another case under Sections 379 and 411 IPC was registered against the petitioner wherein he has completed the sentence. Accordingly, prayer for dismissal of instant petition has been made.

9. However, it is not disputed by learned State counsel that petitioner has undergone actual custody in this case for a period of 2 years, 2 months and 10 days (as on 17.03.2024) and 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 12 prosecution witnesses, only 3 prosecution witnesses have been examined, however, it is stated that 5 witnesses have been given up and 2 other witnesses have been bound down for 24.04.2024.

10. I have heard learned counsel for the parties and perused the paper book as well as reply dated 18.03.2024 and custody certificate dated 17.03.2024 of the petitioner, filed by State of Punjab.

11. In the instant case, petitioner is seeking regular bail primarily on the plea of his long incarceration, no other case under NDPS Act and delay in conclusion of trial.

12. 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 (Crl.) 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 (Crl.) 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.

13. Hon'ble Apex Court in case titled ***Dataram Singh Versus State of Uttar Pradesh and Another***, 2018 (2) RCR (Criminal) 131, has held that freedom of an individual cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgement that a person is believed to be innocent until found guilty.

14. Hon'ble Apex Court in case titled ***Umarmia Alias Mamumia Versus State of Gujarat***, (2017) 2 SCC 731, has held delay in criminal trial to be in violation of right guaranteed to an accused under Article 21 of the Constitution of India.

15. In ***Manoranjana Sinh alias Gupta Versus CBI***, (2017) 5 SCC 218, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial.

Pertinently, appropriate directions can be issued for securing the attendance of the petitioner in the trial.

16. In the instant case, the petitioner is in custody for a period of 2 years, 2 months and 10 days (as on 17.03.2024); investigation in the case is complete; challan stands presented on 30.06.2022; charges have been framed on 21.07.2022, however, only 3 witnesses have been examined out of total 12 witnesses. Therefore, trial in the case is likely to take some time to conclude. As per the custody certificate, in addition to this case, another case under

Sections 379, 411 IPC was registered against the petitioner wherein he is stated to have completed the sentence and no other case under NDPS Act is pending against the petitioner.

17. 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.

18. In view of the above discussion, present petition is allowed and the petitioner (Gurdeep Singh alias Vicky) 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 first Monday of every month till the conclusion of trial.

19. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs. 1,00,000/- 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.

20 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.

21. The petition is accordingly disposed of.

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

(HARSH BUNGER)  
JUDGE

08.04.2024

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No