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(221) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-9630-2024
Date of Decision: 09.04.2024

RAKESH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rishi Pal Chaudhary, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

This 2nd petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.388 dated 18.12.2020 registered under Sections 15(C), 18, 27A, 29 of the NDPS Act and Sections 201 of the IPC at Police Station Uchana, District Jind.

2. The brief facts of the case are that secret information was received that Jagrup @ Jagroop son of Amar Singh had taken delivery of a huge quantity of doda post from a truck driver and had got loaded the same in the TATA Magic (Chhota Hathi) bearing No.PB-08-DG-6706. He would be taking the same to the area of Narwana and if a nakabandi was set-up, he could be arrested.

Based on the aforementioned information, Jagrup @ Jagroop Singh (since granted bail vide order dated 25.01.2024 passed in CRM-M-53752-2023) came to be apprehended with 414 kgs. of poppy husk.

3. During the course of investigation on 19.12.2020, Rakesh (petitioner) son of Arjun was arrested with truck bearing No.HR-45C-9998. The said Rakesh suffered a disclosure statement confessing his guilt and the truck was taken into police possession. On 24.12.2020, Amandeep son of Gurvinder Singh was arrested. He disclosed about the involvement of police officials investigating this case initially in entering into a deal with them (accused) to release him (Amandeep) and Abhishek. He also disclosed that there were call details between Irfan Khan (granted bail vide order dated 21.02.2024 passed in CRM-M-55416-2023) and Amandeep and stated that he had got loaded the contraband from Irfan Khan on 17.12.2020. Based on the said statement and the investigation, FIR No.392 dated 24.12.2020 under Sections 15(c), 15(3)/18/25, 27-A/29, 59(2) NDPS Act No.61 of 1985, Sections 7, 7A and 8 of the Prevention of Corruption Act, 1988 and Sections 120-B, 192, 196, 201, 202, 203, 217, 409 and 166-A IPC, Police Station Uchana, District Jind was registered.

It transpired that the contraband got loaded on a TATA Magic vehicle recovered in the instant FIR had been part of a consignment being carried in a Truck, the recovery from which lead to FIR No.392 dated 24.12.2020.

On 22.02.2021, Subhash @ Golu was apprehended and joined in investigation. He disclosed about the involvement of Mubarik Khan (since granted bail vide order dated 08.02.2023 passed in CRM-M-19850- 2022), Jagrup @ Jagroop and Irfan Khan. There was evidence of telephonic conversations between Irfan Khan and the other co-accused.

On 26.02.2021, Mubarik Khan who had been arrested in Fir No.392/2020, Police Station Uchana, was arrested in the present case as well. He admitted his guilt and disclosed that the amount for the purchase of contraband was deposited in his bank account.

The report under Section 173(2) Cr.P.C. was presented against Jagrup @ Jagroop, Rakesh, Amandeep, Mubarik Khan and Subhash @ Golu on 08.06.2021.

A supplementary challan was submitted against Abhishek on 31.08.2021.

Irfan Khan was arrested in the present case on the basis of production warrants when he was in custody in FIR No.392/2020 on 22.01.2023. Irfan Khan disclosed that he had purchased the recovered contraband from Shakir @ Chhotte Khan, resident of Madhya Pradesh.

The report under Section 173(8) Cr.P.C. was prepared against Irfan Khan and was presented on 21.03.2023.

4. During the course of investigation it transpired that on the night intervening 17/18.12.2020 Amandeep, Rakesh (petitioner) and Abhishek alias Chhotu were apprehended with poppy husk and opium in Truck No.HR-45-C-9998. Amandeep disclosed to the members of the police party that the narcotic substance loaded in the truck was to be supplied to Jagrup and his friend Subhash alias Golu. Thereafter, all the four police officials got Amandeep and Rakesh seated in the truck and proceeded for supplying the contraband to Jagrup and his associates Subhash alias Golu. When they reached near village Palwan in Truck No.HR-45-C-9998 for giving delivery

of the contraband, the police party hid itself and waited for Jagrup and his friend. Thereafter, Rakesh (petitioner) started loading the bags of poppy husk from the cabin of the truck in the Chhota Hathi/Tata Magic No.PB-08-6706. It was then that the police officials apprehended Jagrup along with the contraband and the Tata Magic/Chhota Hathi. By at that time 21 bags of poppy husk had already been loaded in the vehicle of Jagrup. Thereafter, Amandeep entered into an illegal deal with ASI Parveen Kumar not to involve him. Therefore, the police officials took Amandeep and Jagrup to CIA, Jind. ASI Parveen Kumar arrested Jagrup for keeping in his possession 21 bags of poppy husk weighing 414 kgs which were given to him by Amandeep and Rakesh (petitioner). FIR No.388 dated 18.12.2020 under Section 15 of the NDPS Act, P.S. Uchana was registered. However, on the intervention of relatives of Amandeep ASI Parveen Kumar released Amandeep and his associate Abhishek alias Chhotu and did not show the recovery of the remaining 398 Kgs 150 grams of poppy husk after obtaining illegal gratification. It was later that the petitioner who was a conductor/cleaner for Amandeep was arrested by ASI Jaibir on 19.12.2020 with Truck No.HR-45C-9998 for supplying poppy husk and at that time 20 bags of poppy husk were also loaded in the cabin built on the body of the truck which were later on recovered by the team of the Haryana State Narcotic Control Bureau. This led to the registration of the FIR No.392 dated 24.12.2020, U/s 15(C), 18, 25, 27-A, 29-61-85 of the NDPS Act and Sections 7, 7-A, 8 of Prevention of Corruption Act read with Sections 192, 196, 201, 202, 203, 217, 409, 166-A IPC, Police Station Uchana.

5. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. There was violation of mandatory provisions of the Act regarding search and seizure including Sections 42 and 50. The petitioner was in custody since 19.05.2021 and only 02 out of the 10 prosecution witnesses had been examined so far. Therefore, the trial of the present case was not likely to be concluded anytime soon. In one other case registered against the petitioner bearing FIR No.125 dated 17.07.2017 under Section 22 of the NDPS Act and Section 25 of Arms Act Police Station Bhargo Camp, he is on bail. He, therefore, prays that in view of the judgment of the Hon'ble Supreme Court in the case of **Nitish Adhikary @ Bapan Versus The State of West Bengal, SLP (Crl.) Nos.5769/2022 arising out of judgment and order dated 04.05.2022 in CRM(NDPS) No.442/2022, decided on 01.08.2022** and **Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023**, the petitioner was entitled to the concession of bail.

6. A status report dated 08.04.2024 by way of an affidavit of Naveen Sindhu, Deputy Superintendent of Police, Jind-Uchana, District Jind has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He, however, concedes that the petitioner was in custody since 19.12.2020, only 10 of the 40 prosecution witnesses had been examined so far and that he was involved in one only other case.

7. I have heard the learned counsel for the parties.

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8. I have heard the learned counsel for the parties.

9. The Hon'ble Supreme Court in the case of Nitish Adhikary @ Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Decided on 01.08.2022 held as under:-

“As per the office report dated 29.07.2022, copy of the show cause notice along with Special Leave Petition was supplied to the Standing Counsel for the State of West Bengal and separate notice has been served on the State also. However, no one has entered appearance on their behalf.

The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37 of the NDPS 2 Act, registered at Police Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.

The petitioner is accordingly, directed to be released on bail subject to him furnishing bail bonds to the satisfaction of the Trial Court.

The Special Leave Petition is disposed of on the aforestated terms.

Pending application(s), if any, shall stand disposed of.”

10. In Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No.(s).3221/2023, decided on 04.05.2023, held as under:-

“1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’) in FIR No.18/2022, dated 09.01.2022, registered at Police Station Islampur, District Murshidabad, West Bengal.

2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. **They were arrested on the spot and have been in custody for more than one year and four months.**

3. We have heard learned counsel for the parties and carefully perused the record.

4. **The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.**

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court.

6. Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of

the concession of bail granted to them today, and in such a case, necessary consequences shall follow.

7. The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.

8. The Special Leave Petition stands disposed of in the above terms.

9. As a result, pending interlocutory application also stands disposed of.

(emphasis supplied)

11. Admittedly, in ‘Nitish Adhikary @ Bapan’ (supra) and ‘Hasanujjaman & others’ (supra), the accused therein had been granted the concession of bail by the Hon’ble Supreme Court after they had undergone approximately one and a half years of custody. They were also first-time offenders as is borne out from the orders.

12. In the present case, the petitioner has undergone more than two and a half years of custody. And only one other case registered against him. In view of the fact that the petitioner has undergone a substantial period of custody, the rigors of Section 37 of the NDPS Act can be diluted to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to a speedy trial and the case of the petitioner can be considered for the grant of bail.

13. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Rakesh son of Arjun is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

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14. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the cases mentioned in this order.

15. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

16. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

09.04.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No