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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-12032-2024
Date of Decision: 10.04.2024

Vipin

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. N.S. Sodhi, Advocate
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

HARSH BUNGER J. (ORAL)

1. Petitioner (Vipin) has filed the present petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the petitioner in case FIR No.513, dated 18.08.2023, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Ballabgarh, District Faridabad (Haryana).
2. Briefly, as per the aforesaid FIR, on 18.08.2023, ASI Roshan Lal Singh along with ASI Vikram Singh was patrolling in a private vehicle at Chungi No.5, Ballabgarh, when he received an information from a special informer that Vipin (petitioner herein), would come near Vita Dairy, Ballabgarh with the contraband-*ganja patti*. It was informed that if a picket

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is laid down, then said Vipin (petitioner) could be caught with the alleged contraband. Considering the said information to be reliable, picket was laid on the Milk Plant road near Vita Dairy after obtaining the due permission from the SHO concerned. After a while, a boy, carrying black bag on his shoulder, was seen coming and on the basis of suspicion, ASI Jagjit Singh, with the help of fellow officials, apprehended the aforesaid person and on asking, he told his name as Vipin (petitioner). Thereafter, the aforesaid person was made aware of his rights to get his personal search as well as the search of his bag (since some intoxicating articles were suspected therein) to be conducted in the presence of any Gazetted Officer or Magistrate, to which, he responded to be searched in the presence of a Gazetted Officer. Accordingly, Duty Magistrate was called for at the spot. The alleged bag held in the hand of the said Vipin, was searched and one polythene was found, containing *ganja-patti*, weighing 3 kg 300 grams. Accordingly, the aforesaid FIR was registered.

3. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the present case. It is submitted that even otherwise, the alleged recovery is 3 kg 300 grams of *ganja patti*, which falls in the category of “intermediate quantity”, therefore, rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are not attracted in this case. Learned counsel submits that the petitioner is not involved in any other case. Learned counsel for the petitioner contends that the bail application under Section 439 of the Code of Criminal Procedure, filed on behalf of the petitioner before the Court of learned Additional Sessions Judge, Faridabad has been wrongly declined

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vide order dated 23.02.2024 (Annexure P-1). Learned counsel for the petitioner submits that the petitioner is in custody since 18.08.2023. It is further submitted that the investigation in this case is complete; challan stands presented and even charges have been framed on 17.02.2024. It is stated that there are total 12 prosecution witnesses, however, none has been examined till date. Hence, the conclusion of trial is likely to take some time and no useful purpose would be served by keeping the petitioner behind the bars. 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. Accordingly, prayer for grant of regular bail is made.

4. Leaned State counsel has opposed the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence, however, it is not disputed that the alleged contraband recovered from the possession of the petitioner falls in the category of “intermediate quantity”, therefore, the rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are not attracted in this case. It is also not disputed that the charges have already been framed and none of the witnesses has been examined till date. Learned State counsel has also not disputed that the petitioner is not involved in any other case. However, learned State counsel further states that there is an apprehension that in the event of bail, the petitioner may abscond to delay the trial. Accordingly, prayer has been made for dismissal of the present petition.

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5. I have heard learned counsel for the parties and perused the paper book.

6. In the instant case, the petitioner is in custody since 18.08.2023, challan stands presented; and charges have been framed on 17.02.2024, therefore, trial in this case is likely to take some time to conclude and the alleged recovered contraband falls in the category of intermediate quantity, therefore, rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 are not attracted in this case.

7. Hon'ble Apex Court in case titled *Dataram Singh v. State of Uttar Pradesh & Anr, 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.

8. Hon'ble Apex Court in case titled *Umarmia Alias Mamumia v. 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.

9. In *Manoranjana Sinh alias Gupta v. 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.

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

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11. So far as the apprehension expressed by learned State counsel that the petitioner may abscond in order to delay the trial, 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.

12. In view of the above discussion, present petition is allowed and the petitioner 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.

13. In addition, the petitioner (or anyone on his behalf) shall

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prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- 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.

14. 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.

15. The petition is accordingly disposed of.

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

10.04.2024
Himani

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No