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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-14097-2023
Date of Decision: 17.05.2024**

Deepak Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Gurmohan Singh Bedi, Advocate and
Mr. Pawandeep Singh, Advocate
for the petitioner.

Mr. Dhruv Dayal, Addl. A.G., Punjab.

HARSH BUNGER J. (ORAL)

1. Petitioner (Deepak Kumar) has filed this petition under Section 439 of the Code of Criminal Procedure for grant of regular bail in case bearing FIR No.60 dated 24.11.2022, under Section 21(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act'), registered at Police Station Behrampur, District Gurdaspur.

2. In pursuance of advance notice served upon the State of Punjab, status report by way of affidavit dated 19.04.2023 of Mr. Aditya Warriar, I.P.S., Assistant Superintendent of Police, Dinanagar, District Gurdaspur has been filed on behalf of State of Punjab, which is already on record.

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3. Custody certificate dated 16.05.2024 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 24.11.2022. It transpires that on 24.11.2022, Sub Inspector Deepika, Station House Officer, Police Station Behrampur received a secret information that three young boys namely Rohit Kumar, Deepak Kumar (petitioner) and Rajan Kumar, who are into the business of selling *heroin*, are wandering and roaming in I-20 car bearing registration No.PB-18-W-6161 towards Village Kaire.

Considering the information reliable and after following the due process, the barricades were laid down and the said car was intercepted, whereby Rohit Kumar was found driving the vehicle; Deepak Kumar (petitioner) was found sitting on the front adjoining seat and Rajan Kumar was found sitting on the back seat of the vehicle. Thereafter, search was conducted and one kit was found lying under the feet of Rajan Kumar. Upon checking thereof, 274 grams of *heroin* was found. Upon being questioned, Rajan Kumar disclosed that he along with his brothers-in-law, namely Rohit Kumar and Deepak Kumar (petitioner), are into the business of selling *heroin* and they had purchased 400 grams of *heroin* from one Sandeep @ Happy from Village Gana, Police Station Philaur, District Jalandhar for an amount of Rs.2,100/- per gram; and out of the same, he had sold 126 grams of *heroin* to the daughter-in-law (Rozi @ Dimpy) of his maternal uncle at the price of Rs.2,300/- grams; and now, they had got Rs.500/- along with rest of the *heroin* (274 grams), which they were to sell to other customers.

Accordingly, the petitioner along with co-accused was arrested.

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5. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the instant case. It is submitted that nothing was recovered from the conscious possession of the petitioner; rather the alleged recovery was effected from a kit allegedly lying under the feet of co-accused Rajan Kumar. Learned counsel for the petitioner submits that there has been non-compliance of the mandatory provisions of the N.D.P.S. Act.

Learned counsel for the petitioner contends that co-accused Roji @ Dimpi has already been granted anticipatory bail by the Hon'ble Supreme Court vide order dated 13.09.2023 passed in Special Leave to Appeal (Crl.) No.8976 of 2023.

6. Learned counsel for the petitioner submits that the petitioner was arrested in the instant case on 24.11.2022; and apart from this case, he is not involved in any other case. It is submitted that the petitioner has already been granted interim bail by this Court vide order dated 11.08.2023.

Learned counsel for the petitioner contends that petitioner has already undergone actual custody in this case for a period of eight months and twenty one days; investigation in the case is complete, challan stands presented on 03.04.2023, charges have also been framed on 01.05.2023 and out of total fourteen prosecution witnesses, only three prosecution witnesses have been examined by now; thus, the trial 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.

7. Learned counsel for the petitioner submits that the petitioner has not misused the concession of interim bail granted by a co-ordinate

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Bench on 11.08.2023 and he is regularly attending trial, accordingly it is submitted that the aforesaid order dated 11.08.2023 be made absolute. It is submitted 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 ready 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.

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 the recovered contraband in the instant case falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. Learned State counsel further states that there is an apprehension that in the event of grant of bail, the petitioner may abscond to delay the trial. Accordingly, prayer has been made for dismissal of the present petition.

However while referring to the custody certificate, it is conceded by learned State counsel that petitioner has undergone actual custody in the instant case for a period of eight months and twenty one days and he is not involved in any other case. Learned State counsel further concedes that investigation in the case is complete, challan stands presented and charges have also been framed; and out of total fourteen prosecution witnesses, only three prosecution witness have been examined by now.

9. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the



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petitioner.

10. In the instant case, the petitioner is on interim bail and he has undergone actual custody for a period of eight months and twenty one days. Investigation in the case is complete, challan stands presented on 03.04.2023 and charges have been framed on 01.05.2023. Out of total fourteen prosecution witnesses, only three prosecution witness has have been examined by now; therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude.

11. In a recent decision, while considering the bail under the N.D.P.S. Act, the Hon'ble Supreme Court in "**Mohd. Muslim @ Hussain V. State (NCT of Delhi)**", 2023 AIR (Supreme Court) 1648 held as under:

"19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore,



emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

12. 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.

13. In the peculiar facts of the present case and on an assessment of material on record, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence as the recovery is stated to have been effected from a kit lying under the feet of co-accused Rajan Kumar. The issue as regards conscious possession of the contraband by the petitioner would be a subject matter of trial. Concededly, the petitioner is not involved in any other case, moreso under the N.D.P.S. Act, nor there is anything on record to suggest that petitioner is likely to commit an offence under the N.D.P.S. Act, while on bail.

14. Furthermore, petitioner has already been released on interim bail pursuant to order dated 11.08.2023 passed by a co-ordinate Bench of this Court. Learned State counsel has not put forth any circumstance to



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indicate that petitioner has misused the concession of interim bail or that the petitioner has remained absent during trial.

15. In “*Manoranjana Singh 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.

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

16. As regards the apprehension expressed by learned State counsel that the petitioner may abscond during trial or indulge in similar illegal activities, 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 causing interference with the progress of trial or indulging in similar illegal activities, 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 its own merits.

17. Keeping in view the aforementioned facts and circumstances, the 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

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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 mark his presence before the concerned Police Station/Station House Officer on first Monday of every month till the conclusion of trial and in case the Station House Officer refuses to mark his presence, he is permitted to make an application before the Illaqa Magistrate, concerned.

18. 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.

19. 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.

20. The petition is accordingly disposed of.

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

17.05.2024*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No