



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

208

CRM-M-23386-2024 (O&M)
Date of decision: 23.08.2024

Uday Kumar SinghPetitioner

Versus

State of HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Shivansh Malik, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking the concession of bail under Section 439 of the Cr.P.C. in case FIR No.378 dated 06.09.2022 under Sections 20B(ii)C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station IMT, Rohtak, District Rohtak.

2. Learned counsel for the petitioner submits that he has been falsely implicated in the present case, for allegedly transporting 112.90 kgs of ganja. He further contends that, according to the prosecution's own version, he was apprehended based on a secret information, however, the mandatory provisions of the NDPS Act, particularly Section 42, were not fully complied with. It has been argued that there was only partial adherence to the statutory requirements under Section 42 of the NDPS Act. Furthermore, it is asserted that the search was conducted after sunset without proper compliance with the proviso to



Section 42(1) of the NDPS Act, thereby vitiating the entire process. In support, learned counsel has drawn the attention of this Court to Annexures P-1 and P-2. It has still further been argued that the petitioner's false implication in the present case is also evident from the fact that no independent witness was joined at the time of the search coupled with the fact that the offer given under Section 50 of the NDPS Act was also improper. Learned counsel has still further argued that the petitioner has been in custody for over one year and nine months since his arrest on 06.09.2022. To date, only 01 out of the 18 cited prosecution witnesses has been examined, which clearly indicates that the trial will take a considerable amount of time to conclude. Consequently, learned counsel asserts that the petitioner is entitled to the concession of bail *moreso*, when co-accused Sangeeta who was alleged to be travelling with him, has been enlarged on regular bail.

3. Per contra, learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite. It has been argued that a specific secret information was received regarding the involvement of the petitioner in the transportation of ganja, which led to his apprehension. The quantity of ganja i.e. 112.90 kgs, is huge, far exceeding the minimum threshold of the commercial quantity under the NDPS Act. Learned State counsel submits that hence the contention of the counsel for the petitioner that the recovered contraband had been planted upon the petitioner clearly deserves to be rejected. It has been further submitted that following the receipt of secret information it was duly documented in writing, as per the requirement under Section 42 of



the NDPS Act and the subsequent search was conducted following due compliance under Section 50 of the NDPS Act. In support, attention of this Court has been drawn to Annexure P-3, which is the notice issued under Section 50 of the NDPS Act to the petitioner.

4. Furthermore, learned State counsel has argued that even if assuming for the sake of arguments, though not conceded that provisions of Section 42 of the NDPS Act were not fully complied with, the provisions of Section 43 of the NDPS Act would apply in this case, as the vehicle in which the petitioner was travelling and transporting the contraband was in transit. Furthermore, the contention of the learned counsel for the petitioner that the provisions of Section 42 and proviso to Section 42(1) of the NDPS Act have not been fully adhered to, would be a matter of trial moreso when it has not been disputed by the learned counsel for the petitioner himself that there had at least been partial compliance of Section 42 of the NDPS Act inasmuch as the secret information received qua the involvement of the petitioner had been reduced into writing and furthermore an offer as mandated under Section 50 of the NDPS Act had also been given to the petitioner. Additionally, learned State counsel on instructions has submitted that the petitioner is involved in another criminal case under the Indian Penal Code. It has still further been argued by the learned State counsel that the petitioner cannot claim parity with co-accused Sangeeta, as she had been granted bail only on account of the admitted non-compliance of Section 46(4) of the NDPS Act. A vehement prayer has, therefore, been made by the learned State counsel for dismissal of

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the instant petition moreso when the trial has been progressing at a reasonable pace; with all the witnesses being police officials, and therefore, the trial is not expected to take much time to conclude. It has been submitted on instructions that the next date before the learned Trial Court is 16.09.2024 when some more of the prosecution witnesses have been summoned by the learned Trial Court to testify. Learned State counsel submits that the prosecution would ensure that all the witnesses appear on the given dates to testify before the learned Trial Court.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. The alleged recovery effected from the petitioner, following a tip off, is huge and much beyond the minimum classified as commercial under the NDPS Act. The petitioner was apprehended at the spot and the huge recovery effected from the vehicle in which he was allegedly travelling. It has not been disputed by the learned counsel for the petitioner that the secret information had indeed been reduced into writing in compliance of Section 42 of the NDPS Act. No doubt, it was vehemently argued that there had not been full compliance of the mandatory provisions of the NDPS Act including Section 42 and Section 42(1), however, this would be a matter of trial and at this stage while deciding the prayer for bail this Court cannot delve into the same. Co-accused Sangeeta, no doubt, has been extended the concession of bail by this Court, however, in her case it was undisputed by even the State counsel that there had been non-compliance of Section 46(4) of

the NDPS Act. Hence, the petitioner cannot claim parity with the co-accused. Be that as it may, given the huge recovery effected from the petitioner and the fact that the trial has been proceeding at a reasonably good pace, this Court does not deem it fit to accept the prayer of the petitioner and extend the concession of bail to him.

7. Accordingly, the instant petition is hereby dismissed.
8. Pending applications, if any, stand disposed of.
9. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.
10. The Trial Court would, however, make earnest efforts to expedite the trial and conclude it at the earliest, preferably within the next six months. Both the prosecution as well as the defence would also cooperate in the expeditious disposal of the trial by ensuring that the prosecution witnesses testify on each and every date before the learned Trial Court and no unnecessary adjournments are taken by either side.

23.08.2024

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No