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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-26784-2024
with CRM-23202-2024
Date of Decision: 04.07.2024

Saurabh Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Baljinder Singh, Advocate
 for the petitioner.

 Ms. Upasana Dhawan, AAG, Haryana.

HARSH BUNGER J. (ORAL)

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This is an application seeking exemption from filing certified copies of Annexures as well as Adhar Card of the petitioner.

Criminal Misc. Application is allowed as prayed for.

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1. Petitioner (Saurabh Kumar) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail



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to the petitioner in case FIR No.275, dated 30.09.2021, under Sections 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Kalanwali, District Sirsa (Annexure P-1).

2. The first petition (CRM-M-14311-2022) was dismissed vide order dated 27.04.2023 (Annexure P-3).

3. Custody certificate dated 03.07.2024 of the petitioner has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Status report dated 27.06.2024, by way of affidavit of Rajiv Kumar, Deputy Superintendent of Police, Kalanwali, District Sirsa has been filed on behalf of State of Haryana, which is already on record.

5. It is the case of the prosecution that on 30.09.2021, police party headed by SI Dalip Singh apprehended present petitioner Saurabh Kumar, near T Point of Ex. MLA Balkaur Singh, in the area of Mandi Kalanwali when he came there carrying a bag in his hand. After complying with the mandatory provisions of the Act, search of the bag which was carried by the petitioner, was conducted, which resulted in recovery of 22 bottles of Rx *Chlorpheniramine Maleate & Codeine Phosphate Syrup Omerex cough Syrup 100ml, Batch No. TBHU1514 Mfg. 09/2021 and Exp. 08/2022*. Accordingly, the present FIR was registered.

6. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the present case. It is submitted by learned counsel for the petitioner that the petitioner was



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actually never apprehended from the spot from where he was shown to be apprehended in the FIR rather he was picked from his house by the local police. It is further submitted that the petitioner is not involved in any other case. Learned counsel further submits that the petitioner is in custody since 30.09.2021; challan stands presented on 08.03.2022 and even charges have been framed on 11.07.2022. It is submitted that only 9 prosecution witnesses, out of the total 15 prosecution witnesses, have been examined so far; 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.

6.1 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 ready to furnish security in the form of Fixed Deposit Receipt (F.D.R.) of Rs.50,000/- 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.

7. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offence. He further submits that as per FSL report dated 22.02.2022, "Codeine and Chlorpheniramine" were detected in the sample collected from the total recovery of 22 bottles of Rx Chlorpheniramine Maleate & Codeine Phosphate Syrup Omerex cough Syrup 100ml, Batch No. TBHU1514 Mfg.



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09/2021 and Exp. 08/2022, which 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.

7.1 However, while referring to the custody certificate, it is conceded by learned State counsel that the petitioner has already undergone actual custody in the instant case for a period of 02 years and 09 months (as on 03.07.2024). Learned State counsel further concedes that investigation in this case is complete, challan stands presented and charges have also been framed; and out of total 15 prosecution witnesses, only 09 prosecution witnesses have been examined by now.

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

9. In the instant case, the petitioner has undergone actual custody for a period of two years and nine months (as on 03.07.2024). Investigation in this case is complete, challan stands presented on 08.03.2022 and charges have been framed on 11.07.2022. The first petition filed by petitioner seeking regular bail was dismissed on 27.04.2023, i.e. more than a year ago, and out of total 15 prosecution witnesses, only 9 prosecution witnesses 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.

10. In a recent decision, while considering the bail under the



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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



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factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

11. 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 the N.D.P.S. Act.

12. 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 one year and six months and there being no likelihood of completion of trial in the near future.

13. 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.

14. 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.

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



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15. As regards the apprehension expressed by learned State counsel that in the event of grant of regular bail, the petitioner may abscond in order to delay the trial, it is observed that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, 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, 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.

16. 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 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



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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.

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

18. 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.

19. The petition is accordingly disposed of.

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

04.07.2024

Himani

**(HARSH BUNGER)
JUDGE**

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