

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-29516 of 2023(O&M)
Date of Decision: 25.01.2024

Vishnu @ Vishi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Amit Choudhary, Advocate
For the petitioner.

Mr. Vishal Kashyap, DAG Haryana.

KARAMJIT SINGH, J.

1. The present third petition has been filed by the petitioner seeking grant of regular bail in criminal case having FIR No. 58 dated 13.03.2020, registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act (for short the Act) at Police Station Uklana, District Hisar, earlier one being CRM-M No. 13529 of 2021 withdrawn on 04.08.2021 and CRM-M No. 38388 of 2021 disposed of on 20.04.2023.

2. The allegations in nutshell are that police received information that petitioner was into drug trafficking and for that purpose he was using Alto car No. HR20T-2914 and then the police raided the house of the petitioner and said car was found parked in the house of the petitioner and on its checking 82 kg of *ganja* was recovered from the said car in the shape of three bags. The aforesaid car was found to be owned by Krishan but it appeared on record that the said car was used by his son Kuldeep @ Bablu and then Kuldeep was arrested on 08.04.2020. The petitioner was arrested in

this case on 06.11.2020 but no contraband was recovered from his conscious possession.

3. The counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and was not arrested from the alleged place of recovery. It is further contended that as per prosecution story the alleged contraband was recovered from the car owned by Krishan and the petitioner was having nothing to do with said car. It is further submitted that the trial is not progressing ahead as till date only four witnesses are examined on behalf of the prosecution and that the petitioner is having no criminal history. The counsel for the petitioner further submits that Article 21 of the Constitution provides for speedy trial and that the long incarceration of 03 years and 02 months in the present case dilutes the embargo provided in Section 37 of the Act. So, prayer is made that the petitioner be released on regular bail. In support of his contention, the counsel for the petitioner has referred to judgment of Hon'ble Supreme Court in case of **Nitish Adhikary @ Bappan Vs. State of West Bengal**, SLP(Crl.) No. 5769 of 2022, decided on 01.08.2022, wherein the accused involved in a case relating to recovery of commercial quantity of contraband under the Act was granted bail on account of being in custody for a period of 01 year and 07 months as the trial was at a preliminary stage and the accused was not having any criminal antecedents.

4. The present petition is resisted by the State counsel who submits that in the present case commercial quantity of *ganja* was recovered from car which was lying parked in the residence of the petitioner. The State counsel further submits that the said car was owned by one Krishan and at the time of aforesaid recovery the petitioner was not found at the spot and

was lateron arrested on 06.11.2020. The State counsel on instructions from P/SI Surinder Singh has not disputed that the petitioner is in custody for last 03 years and 02 months and is having no criminal antecedents and that till date prosecution is able to examine only 04 witnesses out of total 23 witnesses and that no contraband was recovered from the conscious possession of the petitioner.

5. I have considered the submissions made by counsel for the parties.

6. As per prosecution case, 82.100 kg of *ganja* was recovered from Alto car which was owned by Krishan but was lying parked in the residence of the petitioner. The petitioner was not arrested from the place of recovery and was lateron apprehended by the police on 06.11.2020 but no contraband was recovered from his conscious possession. Admittedly, the petitioner is in custody for the last more than 03 years and 02 months and is not involved in any other criminal case as per the custody certificate furnished by the State counsel. The trial is at its initial stage and is not progressing ahead as till date only 04 witnesses are examined by the prosecution out of total 23 witnesses and it will take considerable time for the trial to conclude. It is a moot point as to whether the recovery effected from a car owned by some other person is to be considered as a recovery from the conscious possession of the petitioner. It is settled position of law that whatever be the nature of the offence, a prolonged trial against an accused under custody, would be violative of Article 21 of the Constitution and such a long incarceration further weakens the embargo provided in Section 37 of the Act. In the given circumstances, no purpose is going to be served by detaining the petitioner in custody for any longer period.

7. In light of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing of bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

25.01.2024
Jiten

(KARAMJIT SINGH)
JUDGE

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