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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-M-33376-2024
Date of Decision: 19.07.2024

SIKANDER @ SHUBHAMPETITIONER

VERSUS

STATE OF HARYANARESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Parteek Gupta, Advocate
for the petitioner.

Mr. Surender Singh Pannu, Addl A.G, Haryana.

SANDEEP MOUDGIL, J

Relief sought

1. The jurisdiction of this court has been invoked 3rd time under section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.529 dated 21.06.2022(Annexure P-1) registered under section 20 and 29 of NDPS Act, 1985(hereinafter referred as 1985 Act), registered at Police Station Chandni Bagh, District Panipat, Haryana.
2. Prosecution story set up in the present case as per the version in the FIR as under:-

The brief facts of the case are that on dated 21.06.2022, ASt Kripal Singh 137 alongwith HC Anil Kumar 12, Constable Sunil 1019, Constable Mohit, Constable Raju 630 driver CIA-1, Panipat alongwith Government Car for

patrolling in search of criminals were present at Sanoli Road, Baibal clieck post when one special informer came present and informed that Sikandar @ Shubham S/o Suraj R/o Balmiki Basti, Gangapuri Road, Panipat is coming from Transport Nagar, Sanoli Road alongwith Ganja in his Baleno Car No. , HROGAT5056. He is having a huge quantity of Ganja in his car. If raid be conducted immediately then he can be apprehended with car Boleno full of Ganja. The information was trustworthy and after informing the colleagues, the ASI Kripal has prepared Notice U/s 42 NDPS and for registering the report in General Diary sent Constable Mohit 1366, PS Chandni Bagh, Panipat. That ASI alongwith colleagues reached at Sanauli Road, Baibal where after reaching near drain, checking was started and after some time as informed by the informer, the car No. HROGAT5056, Colour Grey was seen coming, which was stopped by the ASI with the help of colleagues and after capturing checked the same, on which from the boy sitting on the driving seat, his name address was asked who informed his name as Sikandar @ Shubham S/o Suraj R/o Balmiki Basti, Gangapuri Road, Panipat. He was informed that I suspect that you have some narcotic substance in your car. ASI prepared Notice U/s 50 NDPS Act separate and the same was read over and explained to him that you have complete right delete to get your and your car searched in front of Gazetted Officer or Duty Magistrate. That the accused Sikander @ Shubham above, after understanding the Notice signed under it in English and the accused himself written the reply to the notice that he wants to get himself and his car searched in presence of Duty Magistrate. On which ASI Kripal Singh has called from his mobile No. 9466706090 to Nodal Officer Doctor Ravinder, Veterinary Surgeon,

Jatal, Panipat on his mobile No. 8168922494 and informed him to come on the spot. That after some time Nodal Officer Doctor Ravinder, Veterinary Surgeon, Jatal, Panipat reached on the spot. He was informed about the facts. That on the direction of Nodal Officer, the personal search of ASI Kripal Singh was conducted by HC Anil Kumar 12 and from ASI Kripal Singh apart from daily use articles, nothing else was recovered. Then the Nodal Officer vide his written order directed ASI Kripal Singh to search the accused Sikandar @ Shubham«above and his Car Baleno No. HROGAT5056 in front of him. That ASI Kripal Singh conducted the search of Baleno Car of the accused Sikandar @ Shubham mentioned above as per rules. That inside the Baleno Car on the backseat one heavy plastic bag colour white has been found and on checking the same light green leafy substance was found in it. That as per my experience and as informed by the accused Sikandar @ Shubham above the same is Ganja. That memo of identification of narcotic substance is prepared separately, on which the witnesses and accused Sikandar @ Shubham put their signatures and the Nodal Officer has attested it and put his signatures. That ASI Kripal Singh arranged a computerized weighing machine and after taking out the heavy plastic bag colour white from the car and the same was weighed then the weight of Ganja comes out to 35 kg. From the accused Sikandar @ Shubham mentioned above license and permit was sought. On which the accused Sikandar @ Shubham could not produce any license or permit. That a parcel of the recovered Ganja was prepared separately on which the Nodal Officer had put his signature of KP and prepared sample seal and after using the stamp, he kept the same with him and the parcel of Ganja has been attested by the Nodal Officer

and parcel of Ganja and Car Baleno No. HR06AT5056 was taken into police custody as evidence. The accused and the witnesses put their signatures on memo and the Nodal Officer attested the same. That the accused Sikandar @ Shubham mentioned above, by keeping 95 KG Ganja in his custody has committed offence U/s 20 NDPS Act and the accused could not produce any permit or license, hence, the instant information has been sent to the Police Station through Constable Raju 603 for registration.”

Contentions

On behalf of the petitioner

3. Learned counsel for the petitioner contends that the mandatory provision of section 50 of 1985 Act has not been complied with since it was incumbent upon the serving officials to apprise the petitioner with regard to his statutory right of the petitioner of getting himself searched from a Gazetted officer or Magistrate but the same was not complied with in letter and spirit(Annexure P-3)

4. He further contends that the father of the petitioner prior to the filing of challan had approached the Higher officials by moving an application seeking fair investigation in the aforementioned FIR since the petitioner has been falsely roped in the present case.

5. He vehemently argues that the petitioner's application under section 91 Cr. P.C. for preserving and producing the call details of the police officials concerned for the date 20.06.2022 to 22.06.2022 was declined by the trial court vide order dated 15.12.2022(Annexure P-7) whereas the same was allowed by this court vide order dated 17.05.2023(Annexure P-8) but the investigating agency is hesitant in providing call details record of the

said officials to hide them behind the umbrella of protection under the right to privacy.

6. He further argues that the petitioner has been facing the wrath pertaining to slow pace of the trial wherein his 1st bail application was rejected by the trial court, Panipat vide order dated 16.12.2022 (Annexure P-9), thereafter the same were dismissed as withdrawn twice in this court vide orders dated 17.05.2023 and 02.02.2024 respectively. Again, the 3rd bail application was rejected by the trial court vide order dated 02.07.2024(Annexure P-12) wherein it was categorically observed that *long custody is not the changed circumstances for releasing the petitioner* thereby vitiating the significance of fundamental right guaranteed under Article 21 of the Constitution of India. In addition, even after 02.02.2024, approximately 6 months had lapsed and out of 19 PW's, only 1 has been examined so far.

7. Learned counsel for the petitioner strenuously argues that failure to conclude the trial within the reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India and as such, overriding the statutory embargo created under Section 37(1)(b) of the 1985 Act in such circumstance be considered while relying upon the judgment of the Apex court in ***Mohd. Muslim vs State(NCT of Delhi), 2023 SCC Online SC 352*** wherein it has been held that grant of bail on ground of undue delay in trial, cannot be said to be fettered by section 37 of the 1985 Act.

On behalf of the State

8. On the other hand, learned State Counsel has argued that recovery of Ganja was made from the backseat of the car in which the petitioner was travelling. The petitioner was in conscious possession of

commercial quantity of the contraband. Rigors of Section 37(1)(b) of the 1985 Act are applicable and regular bail should not be granted to the petitioner unless both the conditions thereof are satisfied. In view of nature of accusation and gravity of the offence, the petitioner do not deserve grant of regular bail. Therefore, the petition deserves to be dismissed

Analysis

9. Exercise of power to grant bail is not only subject to limitations contained under section 439 of Cr.P.C., 1973 but is also subject to limitations placed by Section 37 of the 1985 Act. No person can be enlarged on bail for offences enumerated under Section 37 of the 1985 Act unless twin conditions embodied therein are satisfied. The finding mandated under Section 37 of the 1985 Act in this regard is a sine qua non for granting bail to the accused under the 1985 Act. Section 37 of the 1985 Act, which legislates the offences under the 1985 Act to be cognizable and non bailable and embodies the limitations on grant of bail for the specified offences, reads as under:-

“37. Offences to be cognizable and non-bailable. — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

10. ***In Union of India Vs. Rattan Malik @ Habul : (SC) : 2009(1)***

R.C.R. (Criminal) 938 Hon'ble Supreme Court observed as under:-

“13. It is plain from a bare reading of the nonobstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the Narcotic Drugs And Psychotropic Substances Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not

guilty, has to be based on "reasonable grounds". The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the Narcotic Drugs And Psychotropic Substances Act."

11. Hon'ble Supreme Court has also held in ***State of Kerala Vs. Rajesh (SC) : 2020 (1) R.C.R.(Criminal) 818*** that in the matter of grant of bail in cases under the NDPS Act liberal approach is uncalled for.

12. The facts and circumstances of the present case and material on record have to be *prima facie* gone through for considering as to whether the conditions laid down in Section 37 of the 1985 Act are satisfied in the present case to entitle the petitioner to grant of regular bail.

13. As per the prosecution version, one plastic bag of 35KG Ganja was allegedly recovered from the backseat of the baleno car bearing no. HR06-AT-5056 in which the petitioner was traveling. Admittedly, notice informing the petitioners about their right to search of the car in the presence of Gazetted Officer or Magistrate was served and on the basis of his alleged consent search of the car and person was conducted by ASI Kripal Singh on receiving the direction of Nodal Officer, Dr. Ravinder Singh. There is no dispute with the proposition of law that the provisions of Section 50 of the

1985 Act are mandatory as held in *State of Rajasthan Vs. Parmanand and another : 2014(2) R.C.R. (Criminal) 40* however, it is also well settled that Section 50 of the 1985 Act applies to case of personal search and does not apply to search of bag/briefcase/vehicle or premises. Therefore, search of the car by ASI Kripal Singh was well within the mandate of law wherein the accused was searched in person after receiving instructions from a Gazetted officer. It is also to be noted that it is not necessary that the information required to be given under Section 50 of the 1985 Act should be in a prescribed form or in writing but it is rather mandatory that the suspect is made aware of the existence of his right to be searched before a gazetted officer or a Magistrate.

14. Moreso, the drug menace in Punjab and Haryana is writ large and large number of youths are falling prey at the hands of drug mafia. The petitioner though not a habitual offender but his role nevertheless not of a law abiding citizen as can be observed from contraband recovered from his conscious possession i.e. 35 kgs ganja. With deep concern, it is of utmost importance at this stage to say that clandestine smuggling of narcotic drugs and psychotropic substance has led to drug addiction among a sizeable section of the public. It has to be borne in mind that in a murder case the accused commits murder of one or two persons while those persons who are dealing in a narcotic drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable, it causes deleterious effects a deadly impact on the society; they are hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic

policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti-drug justice is a criminal dimension of social justice as drug addiction forms vitals of the society along with illicit money generation by drug trafficking.

15. In the present case having heard learned counsel for the petitioner and examining the facts and circumstances at this juncture, there is no material evidence to establish innocence of the petitioner as such. Admittedly, the petitioner is not involved in any other case under the 1985 Act and in view of his antecedents there is reasonable ground for believing that he would not commit any offence under the 1985 Act in future. However, in the present case first condition laid down in Section 37(1)(b) of the 1985 Act as to there being reasonable ground for believing that the petitioner has not committed the alleged offence is not satisfied. Therefore, taking into consideration the rising drug menace as well as limitations contained in Section 37(1)(b) of the 1985 Act, the petitioner is not entitled to grant of regular bail.

DECISION

16. In view of the above discussion, I am of the considered view that the petitioner do not deserve grant of regular bail and the petition is liable to be dismissed.

17. Ordered accordingly.

19.07.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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