

CRM-M-35740-2023

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-35740-2023

Date of decision : January 18, 2024

Surender Singh

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Navkiran Singh, Advocate, for the petitioner
Mr. Abinash Jain, DAG, Haryana

KULDEEP TIWARI, J. (ORAL)

1. The petitioner who was arrested, while carrying 26 kgs of *Ganja* flowers/leaves on dated 27.9.2022, and has now approached this Court through the instant petition for grant of regular bail in case FIR No. 643 dated 27.9.2022, under Sections 20 and 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, the NDPS Act), registered at Police Station Gharaunda, District Karnal.

FACTUAL MATRIX

2. The prosecution agency was set into motion on a secret information received by Anti Narcotics Cell, Karnal, Haryana, to the extent that petitioner-Surender Singh, deals in supply and sales of *Ganja* flower/leaves, and he is carrying huge quantity of *Ganja* flower/leaves in Canter bearing No. UP-26-T-6939, and is waiting for

a buyer at Panipat to Gharaunda G.T. Road in front of a closed *Dhaba*, near/adjoining Rajinder *Dhaba*. The secret information was subsequently reduced into writing in pursuance of Section 42 of the NDPS Act. A raid was conducted. As per the contents of the FIR, the statutory compliance was made and two plastic bags white in colour were found under the tarpaulin and the same were brought down and on weighing the same, one bag was found to be 15 kgs and the other was found to be 11 kgs. in weight. After making recoveries, the inventory was got prepared before the learned Illaqa Magistrate concerned. The final report has been filed.

SUBMISSIONS BY LEARNED COUNSEL FOR THE PETITIONER

3. Learned counsel for the petitioner has based his argument mainly on the ground that the alleged recovery which was effected from the petitioner, contains ***Ganja Phool Patti***, whereas, as per statutory definition of ***Ganja***, the seeds, and leaves, when not accompanied by the tops, cannot be considered as ***Ganja***. Therefore, he submits that in case the leaves of the cannabis are separated, then the quantity of actual ***Ganja*** in the bags as allegedly recovered from the petitioner, would be lower than the weight determined by the Investigating Officer. To further substantiate his arguments, he relied upon clause (iii) of Section 2 of the NDPS Act, which defines *Ganja* as under:-

(iii) "cannabis (hemp)" means--

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the

cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) Ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any rink prepared therefrom;

4. Learned counsel for the petitioner further placed reliance upon ***Ibrahim Khwaja Miya Sayyed @ Raju versus The State of Maharashtra, 2023(2) AIR Bom. R (Cri.) 392; Popat Govardhan Nagode vs The State of Maharashtra, Law Finder Doc Id # 2180274; Roshan Kumar and another vs State of Haryana, 2019 (3) RCR (Criminal) 692; Sudhir vs State of Haryana, 2008(4) R.C.R. (Criminal) 385; Hasubhai Kamabhai Thakor vs The State of Gujarat, SLP (Crl.) No. 2523 of 2023.***

5. The learned counsel for the petitioner has further submitted that the perusal of the FIR as well as the inventory reports, makes it clear that the alleged recovery of contraband, was carrying ***Ganja Phool Patti***. The relevant extract of the inventory as prepared before the learned Illaqa Magistrate concerned is read as under:-

“File put before me being Duty Magistrate. SHO Police Station Gharaunda has moved an application through ASI Bahadur Singh (I.O.) and

PSI Balwan Singh before me in compliance of section- 52 A of N.D.P.S. Act, 1985 (hereinafter to be referred as the Act') and has also produced case property weighing 15 kg of Ganja Phool Patti and 11 kg of Ganja Phool Patti recovered from accused Surrender Singh son of Sh. Darshan Singh, resident of Simbhal Kheda, Rampura, UP by the police on 27.09.2022. The case property contained in two white plastic bags with five seals on each bag, three seals each of mark SC, one seal each of mark SS and one seal each of mark KS were produced in the court. Thereafter, the case property was opened after breaking one seal of mark SC from both bags in my presence and it was weighed on the electronic weighing machine and its weight was found to be 11 kg and 15 kg respectively (with seals). Out of this case property measuring 11 kg and 15 kg respectively (total 26 kg) of Ganja Phool Patti, two samples each of 100 grams (from both bags) were taken out and the same were put in small plastic polythene and thereafter were put in white cloth bags and the same were sealed with one seal (on each sample) of Mark RAVI in my presence and remaining case property of 14.800 kg (out of 15 kg) and remaining case property of 10.800 kg (out of 11 kg) contained in a plastic polythene with white cloth bag with one seal of Mark RAVI in place of mark SC (each bag). One seal of mark RAVI were also affixed on each of two clothes for the purpose of identification of the sample seals."

6. The learned counsel for the petitioner has further

submitted that from perusal of the above, it transpired that the leaves were not extracted, and rather the entire recovered substance was taken as *Ganja* and that the issue whether the recovered contraband was not accompanied by tops of the *Ganja*, is yet to be established by the prosecution by leading evidence before the learned trial court concerned, the alleged contraband is stated to be 26 kgs which is 6 kgs more than the commercial quantity i.e. 20 kgs *Ganja*, as prescribed under the Schedule attached to the NDPS Act.

SUBMISSIONS BY LEARNED STATE COUNSEL

7. Learned State counsel vociferously opposed the grant of regular bail on the ground that the statutory bar as envisaged under Section 37 of the NDPS Act, does not entitle the petitioner to be released on regular bail. He further submits that two conditions i.e. (a) the Court must satisfy that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and (b) that the accused is not likely to commit any offence while on bail, have not been satisfied, therefore, the instant petition deserves to be dismissed.

8. Learned State counsel has placed on record custody certificate of the petitioner, which, reveals that the petitioner has suffered incarceration of 01 year, 03 months and 17 days as on today, and he is not involved in any other criminal case. The final report under Section 173 Cr.P.C. was filed on dated 1.11.2022, and

charges were framed on dated 2.2.2023, and out of total 16 witnesses cited by the prosecution, only one witness has been examined so far.

ANALYSIS

9. This Court has examined the submissions made by the learned counsel for both the sides, and has also gone through the record. Before giving any opinion, let us examine the legal preposition to decide the instant bail petition.

10. *“Bail is the Rule and Jail is an Exception”*. This basic principle of criminal jurisprudence was laid down by the Hon’ble Supreme Court, way back in 1978, in its landmark judgment titled ***“State of Rajasthan V. Balchand alias Baliay”, 1977 AIR 2447, 1978 SCR (1) 535***. This principle finds its roots in one of the most distinguished fundamental rights, as enshrined in Article 21 of the Constitution of India. Though the underlying objective behind detention of a person is to ensure easy availability of an accused for trial, without any inconvenience, however, in case the presence of an accused can be secured otherwise, then detention is not compulsory.

11. The right to a speedy trial is one of the rights of a detained person. However, while deciding application for regular bail, the Courts shall also take into consideration the fundamental precept of criminal jurisprudence, which is “the presumption of innocence”, besides the gravity of offence(s) involved.

12. In “**Nikesh Tarachand Shah V. Union of India**”, (2018)

11 SCC 1, the Hon’ble Supreme Court has recorded the following:-

“14. In Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 at 586-588, the purpose of granting bail is set out with great felicity as follows:-

“27. It is not necessary to refer to decisions which deal with the right to ordinary bail because that right does not furnish an exact parallel to the right to anticipatory bail. It is, however, interesting that as long back as in 1924 it was held by the High Court of Calcutta in Nagendra v. King-Emperor the object of bail is to secure the attendance of the accused at the trial, that 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 and that it is indisputable that bail is not to be withheld as a punishment. In two other cases which, significantly, are the ‘Meerut Conspiracy cases’ observations are to be found regarding the right to bail which deserve a special mention. In K.N. Joglekar v. Emperor [AIR 1931 All 504 : 33 Cri LJ 94] it was observed, while dealing with Section 498 which corresponds to the present Section 439 of the Code, that it conferred upon the Sessions Judge or the High Court wide powers to grant bail which were not handicapped by the restrictions in the preceding Section 497 which corresponds to the present Section 437. It was observed by the court that there was no hard and fast rule and no inflexible principle governing the exercise of the

discretion conferred by Section 498 and that the only principle which was established was that the discretion should be exercised judiciously. In Emperor v. Hutchinson [AIR 1931 All 356, 358 : 32 Cri LJ 1271] it was said that it was very unwise to make an attempt to lay down any particular rules which will bind the High Court, having regard to the fact that the legislature itself left the discretion of the court unfettered. According to the High Court, the variety of cases that may arise from time to time cannot be safely classified and it is dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes. It was observed that the principle to be deduced from the various sections in the Criminal Procedure Code was that grant of bail is the rule and refusal is the exception. An accused person who enjoys freedom is in a much better position to look after his case and to properly defend himself than if he were in custody. As a presumably innocent person he is therefore entitled to freedom and every opportunity to look after his own case. A presumably innocent person must have his freedom to enable him to establish his innocence.

28. Coming nearer home, it was observed by Krishna Iyer, J., in **Gudikanti Narasimhulu v. Public Prosecutor [(1978) 1 SCC 240 : 1978 SCC (Cri) 115]** that: (SCC p. 242, para 1)

“... the issue of bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to

a socially sensitized judicial process. . . . After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The last four words of Article 21 are the life of that human right.”

29. In **Gurcharan Singh v. State (Delhi Administration) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41]** it was observed by Goswami, J., who spoke for the court, that: (SCC p. 129, para 29)

“There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of judicial discretion in granting or cancelling bail.”

30. In **AMERICAN JURISPRUDENCE** (2d, Volume 8, p. 806, para 39), it is stated:

“Where the granting of bail lies within the discretion of the court, the granting or denial is regulated, to a large extent, by the facts and circumstances of each particular case. Since the object of the detention or imprisonment of the accused is to secure his appearance and submission to the jurisdiction and the judgment of the court, the primary inquiry is whether a recognizance or bond would effect that end.”

It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail.”

13. Also, in **Siddharam Satlingappa Mhetre v. State of**

Maharashtra, Criminal Appeal No.2271 of 2010, the Hon'ble Supreme Court has insisted upon striking a perfect balance of sanctity of an individual's liberty as well as the interest of the society, in grant or refusing bail. The relevant extract of the judgment (supra) is reproduced hereinafter:-

3. The society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

14. Also, Hon'ble Supreme Court in “**Satender Kumar Antil versus Central Bureau of Investigation and another**”, 2022(10) **SCC 51**, has discussed this serious issue with regard to delay in trial and its effect on the Right to Life of an individual under Article 21 of the Constitution of India. Para 49 of the aforesaid judgment is reproduced as under:-

“49. Sub-section (1) mandates courts to continue the proceedings on a day- to-day basis till the

completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of Section 309 continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate Article 21. This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of Article 21. While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”.

15. The Hon'ble Supreme Court in “**Rabi Prakash Versus The State of Odisha**”, **Special Leave to Appeal (Criminal) No.4169 of 2023**, has also discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of

the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b) (ii) of the NDPS Act.”

16. This Court has examined the instant petition on the touchstone of the hereinabove extracted settled legal principle(s) of law and is of the considered opinion that the instant petition is amenable for being allowed.

17. The reason for forming the above inference emanates from the factum that:- (i) the alleged contraband is marginally above the commercial quantity; (ii) there is debatable issue with regard to the quantity of the contraband; (iii) the petitioner has already suffered incarceration for 01 year, 03 months and 17 days ; (iv) the trial is at very initial stage as out of total 16 prosecution witnesses,

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only one witness has been examined; and (v) the petitioner is not involved in any other criminal case.

FINAL ORDER

18. Considering the hereinabove, made discussion, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

19. It is clarified that anything observed here-in-above shall have no effect on the merits of the trial and is meant for deciding the present petition only.

January 18, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No