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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: 05.11.2024

Ram Charan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present : Mr. Vishal Garg Narwana, Advocate,
Mr. Nitin Sachdeva, Advocate,
Mr. Om Pal Potlia, Advocate and
Mr. Virat Amarnath, Advocate
for the petitioner

Mr. Anmol Malik, DAG Haryana and
Mr. Gaurav Bansal, DAG Haryana

KIRTI SINGH, J.(Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.116 dated 01.05.2023 registered under Section 20 of NDPS Act, 1985 (Section 201 IPC and Section 29 of NDPS Act added later on) at Police Station Mundkati, District Palwal.

2. The above-mentioned FIR was got registered on the basis of complaint made by ASI Ashok STF PWL. The contents of the FIR are reproduced herein below :-

"To, Incharge, Police Station: Mundkati, Jai Hind, Today myself and HC Surrender No. 800/PWL, HC Suraj No. 63/NUH STF Unit Palwal, with Government vehicle Balero No. HR-10-AD-2131, color White with driver CT Baljeet No. 2480/GGM alongwith LAP-TOP printer



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and electronic weighting machine of Special task force Palwal, were present at Mathura Delhi road near old toll Tumsara for apprehending the wanted criminals, then the special informer met me and gave information at 06.50 PM that Rajinder son of Saamal resident of Bajota, PS. Tappal, District Aligarh, aged about 45 years, works as driver in Vehicle No. HR-55-X-9426, Make Eicher canter and bring material from Orissa in his vehicle and brings ganja leaves by hiding the same alongwith the material by purchasing the same and by bringing the same here, sells it. Today also, above Rajinder in his vehicle no. HR-55-X-9426, make Eicher canter with ganja leaves will go towards Palwal through Hodal road. If barricading is laid immediately then the above Rajinder can be apprehended with his Eicher canter along with ganja leaves. As the information is from a believable persons and social person. Notice under Section 42 NDPS Act was prepared and by giving the same separately to HC Surender No. 800/PWL Special task force was sent to Incharge, Police Station Mundkati for information. I informed the fellow officials regarding the secret information and asked the passer by persons to join the raiding party however all the them by expressing their respective genuine inability went away from the spot without telling the name and address. AT about 7.40 pm, barricading was started at Mundkati round about, after some time HC Surender No. 800/PWL after giving notice under section 42 NDPS Act from Police Station Mundkati came present on the spot. After some time, from Hodal side on the highway, one vehicle Eicher canter was seen coming. Myself by signaling through torch signaled him to stop. The drive of the Eicher canter suddenly stopped the Eicher canter on the corner of the road and the driver of the Eicher canter was apprehended by myself and my fellow officials and asked him about the name and address, then the driver told his name as Rajinder son of Saamal resident of Bajota, PS. Tappal, District Aligarh. On checking the number of the Eicher canter on the front and back, the same was found as HR-55-X-9426, make Eicher canter, which was found correct as told by the secret informer. Then myself by giving notice under Section 50 NDPS to the



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apprehended person Rajinder son of Saamal above informed that, "I have suspicion of some intoxicating substance with you and in your Eicher Canter No. HR- 55-X-9426. The search of your body and your Eicher canter No. HR- 55-X-9426 is necessary to be conducted. You have legal right that you can get the search of your body and your Eicher Canter from some Magistrate or a gazetted officer. Notice under Section 50 NDPS Act was prepared, on which the above apprehended person Rajinder and witnesses put their respective signatures. Then the above apprehended person Rajinder after thinking for some time, expressed his consent to get the search of his body and Eicher canter conducted through gazetted officer. Upon which, consent notice under Section 50 NDPS Act was separately prepared, on which the above apprehended person Rajinder and witnesses put their respective signatures. Then myself at 8.50 pm from my M.No. 741900101 called on the mobile no. 9818127960 of Sh. Trilok Mangla, SDO Public Health Department No. 2, Palwal and by giving details of the occurrence requested to reach on the spot. After some time, Sh. Trilok Mangla, SDO Public Health Department No. 2, Palwal in his Private vehicle No. HR-51-CB-9813, Make Breeza came present on the spot. I told the details of the place of occurrence to SDO Sahab in oral manner and got the notice SO NDPS and Consent Notice 50 NDPS Act was seen by the gazetted officer. At the same time, by stopping the passer-bye, by telling about the circumstances of the spot, were asked about becoming spot witness, all the passer bye by telling about their genuine compulsion went away from the spot without telling name and address. Then SDO Sahab conducted search of my body and on the spot except from necessary documents etc, no other prohibited intoxicant substance was recovered. Regarding my personal search, list was separately prepared by gazette officer, on which I put my signatures as witness. Then myself as per the orders of SDO Sahab conducted the search of body of the apprehended person as per rules. From the body and clothes of the apprehended person, apart from necessary documents no other article was recovered. Then I checked the body of the vehicle



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Eicher canter, then the body of canter was filled with wooden ply board. When they were removed and checked then by cutting the ply board from center, inside the some suspicious substance was seen in plastic bags of different color. All the plastic bags were brought out with the help of fellow officials, which were total 28 bags. All the 28 plastic bags were opened, smelled and checked then intoxicant substance ganja leaves were found and the above apprehended person Rajinder confirmed about ganja leaves to be in all 28 plastic bags. Then the cabin of the vehicle was also checked, from the cabin of the vehicle no other suspicious substance was recovered. Then I weighed all the 28 plastic bags along with ganja on electronic weighing machine, the weight of the first plastic bags was total 18 kilograms which for identification was given Mark 1, weight of second plastic 20.200 kilogram, which was given Mark 2, weight of third plastic was 16 kilogram, which was given Mark 3, fourth plastic weighed 18.900 kilogram, which was given mark 4, fifth plastic weighed 13.900 kilogram, which was given Mark 5, Sixth plastic bag weighed 19 kilogram, which was given Mark 6, Seventh plastic bag weighed 16 kilogram, which was given Mark 7, Eight plastic bag weighed 12.100 kilogram, which was given Mark 8, Ninth plastic bag weighed 19 kilogram, which was given mark 9, Tenth bag plastic weighed 20.500 which was given Mark 10, Eleventh bag plastic weighed 21.900 which was given Mark 11, Twelfth bag plastic weighed 20.900 which was given mark 12, Thirteenth plastic bag weighed 15.900 which was given Mark 13, Fourteenth plastic bag weighed 15 kilogram which was given mark 14, Fifteenth bag plastic weighed 13.900 kilogram which was given mark 15, Sixteenth bag plastic weighed 15.900 kilogram which was given mark 16, Seventeenth bag plastic total weighed 16.100 which was given mark 17, Eighteenth bag plastic weighed 17 kilo which was given Mark 18, Nineteenth bag plastic weighed 15.700 kilogram which was given mark 19, Twentieth bag plastic weighed 11.800 which was given mark 20, Twenty first bag plastic weighed 12.400 which was given mark 21, Twenty second bag plastic weighed 13.100 kilogram which



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was given mark 22, Twenty third bag plastic weighed 9 kilogram which was given Mark 23, Twenty fourth bag plastic weighed 8 kilogram which was given Mark 24, Twenty fifth bag plastic weighed 9 kilogram which was given Mark 25, Twenty sixth bag plastic weighed 11 kilogram which was given mark 26, Twenty seventh bag plastic weighed 8.800 kilogram which was given mark 27 and Twenty eighth bag plastic weighed 9 kilogram which was given Mark 28. The weight of all 28 plastic bag along with ganja came to 418 kilogram. Then by tying the mouth of all the plastic bags with piece of white cloth separately, parcels were prepared separately. Myself by duly sealing all the 28 parcels by putting my one seal of NK prepared separate parcels and one sample seal was separately prepared, on which I put two seals of NK. The seal after use was handed over to HC Suraj No. 63/NUH STF Unit Palwal. SDO Sahab duly seal the 28 parcels of plastic bag and sample seal by putting one seal each of DK and the seal after use was kept by himself. All the 28 parcels and sample seal were attested. Then all the 28 parcels of ganja leaves total weight 418 kilogram, sealed NK/1, DK/1 and Sample Seal NK/2, DK/1 and Eicher canter no. HR-55-X-9426, make Eicher canter and wooden ply board in the same were taken into police possession as evidence by preparing the seizure memo separately. On the seizure memo, above accused Rajinder and as witnesses HC Surinder No. 800/PWL, HC Suraj No. 63/NUH STF Unit Palwal, put their respective signatures. Then SHO Sahab attested the seizure memo. Accused Rajinder son of Saamal resident of Bajota, Police Station Tappal, District Aligarh by keeping in his possession 418 kilogram ganja leaves has committed offence under Section 20-61-85 NDPS ACT. Myself by reducing the same into writing has sent HC Surender No. 800/PWL to Police Station Mundkati. By registering the case, the number of the case be informed. The special report of the case be sent to the concerned senior officers through appropriate source and second investigating officer be sent on the spot as per rules. Myself, fellow officials, accused Rajinder son of Saamal resident of Bajota, P.S. Tappal, District Aligarh, case property is busy in conducting



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investigation on the place of occurrence. Attested: Mathura Delhi Road near Mundkati Chowk. Sd/- ASI Ashok STF Unit Palwal Dt. 01.05.2023 at 12.10 A.M. Today at Police Station: On receiving the above writing by hand through HC Surinder 800/PWL STF Palwal in the police station, FIR No. 116 Dt. 01.05.23 U/s 20-61-85 NDPS ACT PS MUNDKATI was registered and by preparing the copies of the FIR through CCTNS, the special report are being sent to Illaka Magistrate sahab and senior officers through special messenger C. Deepak 1117/Palwal. Copy of police file along with original writing with HC is being sent on the place of occurrence and for conducting the further investigation of the present case P/SI Satpal STF was informed through telephone to reach at the spot. Note: P/SI Satpal STF is the investigating officer of the above case whereas the above case has been shown in the CCTNS ID of HC Sanjay. Note :- The case was registered in presence of ASI Ravi 106/Palwal."

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in this case and he has been nominated on the basis of disclosure statement suffered by co-accused Rajender. He further submits that the disclosure statement of the petitioner is not admissible as evidence being confessional in nature made before the police authority in view of provision of Section 25 of Indian Evidence Act. Learned counsel for the petitioner has placed reliance upon judgment passed by Hon'ble Supreme Court in ***Sanuj Bansal vs. The State of Uttar Pradesh and another, 2024(4) RCR(Criminal) 129*** to contend that the confessional statements recorded by the Police Officers which are part of the charge-sheet cannot remain a part thereof and the same must be ignored. He further submit that the petitioner has undergone actual custody of 03 months and 08 days and no other case has been registered against him.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. As per the custody

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certificate, the petitioner has undergone actual custody of 03 month and 08 days and there is no other case registered against him . He submits that charges were framed on 23.02.2024 and out of 35 prosecution witnesses, one prosecution witness has been examined.

5. Heard the rival submissions made by learned counsel for the parties.

6. Admittedly, the charges were framed on 23.02.2024 and out of total 35 prosecution witness, only one prosecution witness has been examined till date. No recovery was effected from the petitioner and the petitioner was nominated only on the basis of disclosure statement suffered by co-accused Rajender and the investigation of the case is complete.

7. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the charges have been framed and only one prosecution witness has been examined till date. Therefore, this Court is of the view that further incarceration of the petitioner would not serve any purpose.

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and order dated 22.08.2023 is made absolute. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (iii) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (iv) The petitioner shall not commit an offence similar to the offence of which they are accused of, or for commission of which he is suspected.
- (v) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the



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facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.
10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

05.11.2024
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(KIRTI SINGH)
JUDGE

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