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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41651-2023 (O/M)

Date of decision : 20.03.2024

Balvir Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present:- Mr. Sahil Vashishat and Mr. Jashandeep Sandhu, Advocates
for the petitioner.

Mr. Sartaj Singh Gill, Senior DAG Punjab.

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HARSH BUNGER, J.

1. This is second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Balvir Singh) for grant of regular bail in case FIR No. 82 dated 07.06.2022 (Annexure P-1), registered under Sections 15, 18, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act, 1985'), at Police Station City-2, Khanna.

2. The first petition filed under Section 439 of the Code of Criminal Procedure (CRM-M-18414-2023) by petitioner was dismissed, vide order dated 31.07.2023 (Annexure P-3).

3. Status report by way of affidavit dated 26.02.2024 of Shri Rajesh Kumar, PPS, Deputy Superintendent of Police, Police District Khanna, District Ludhiana, and custody certificate dated 25.02.2024 have been filed on behalf of State of Punjab, which are already on record.

4. Briefly, the aforesaid case FIR was registered on the basis of ruqa sent by one Vinod Kumar, Incharge, C.I.A. Staff, Khanna; wherein, it was stated that on 07.06.2022, he along with other police officials was present at Delhi-Ludhiana Highway, on a government vehicle bearing registration No. PB-10-GK-6173 (make 'Balero'), in front of Pristine Mall, G.T. Road, Khanna, in relation to patrolling/search of suspicious/bad elements and were conducting checking of vehicles coming from the side of Mandi Gobindgarh. At about 2:00 p.m., one truck bearing registration No. PB-05-T-9195 came from the side of Mandi Gobindgarh, which was stopped by the police party on the basis of suspicion and two Sikh men were present therein. Upon enquiry, the driver disclosed his name as Tirath Singh son of Joginder Singh resident of Begepur, Police Station Kacha Pacca, District Tarn Taran and the other person disclosed his name as Balvir Singh son of Pishora Singh resident of Village Lohka, Police Station Patti, District Tarn Taran. They were made aware of their legal rights regarding search etc.; whereupon, both the aforesaid persons namely, Tirath Singh and Balvir Singh, jointly stated that they wanted to get their search as well as the search of their truck conducted in the presence of a higher official. Accordingly, one Rajan Parminder Singh, PPS, DSP (SD), Khanna, was requested to reach at the spot after informing him about the circumstances. Upon arrival of said Rajan Parminder Singh, PPS, DSP (SD), Khanna, on the spot, he introduced himself to the apprehended persons namely Tirath Singh and Balvir Singh and after following the procedure, made them aware of their legal rights of getting their search as well as the search of their truck conducted since they were suspicious of intoxicating substance therein;

whereupon, the said persons jointly stated that they had faith in the said officer (DSP) and said that he can conduct their search as well as the search of their truck (PB-05-T-9195).

5. After following the procedure, the search of the truck was conducted and one heavy black coloured polythene bag was recovered from the cabin above the driver side and after opening it, the same was sniffed and opium was found therein. The recovered opium was weighed with the electronic scale and the same was found to be 3 kgs. along with polythene bag. Thereafter, upon search on truck's terrace, one white coloured heavy plastic gunny bag was recovered, which was sealed. The said gunny bag was checked, from which poppy husk was recovered. On weighing the said gunny bag containing poppy husk, the same was found to be 20 kgs. Accordingly, the ruqa was sent to the police station for registration of the FIR, which was registered and the aforesaid persons namely, Tirath Singh and Balvir Singh, were arrested.

6. As per status report, the contraband recovered from the conscious possession of the petitioner is stated to be commercial in nature.

7. Learned counsel for the petitioner submits that the petitioner is innocent and he has falsely been implicated in the present case. It is submitted that false, vague and baseless allegations have been levelled against the petitioner, however, the petitioner has nothing to do with the alleged recovery of 20 kgs. of poppy husk and 03 kgs. of opium. Learned counsel for the petitioner further submits that the petitioner has been in custody since 07.06.2022 i.e. more than 1 year and 08 months; investigation of this case is complete; challan stands presented on 23.11.2022; charges

framed on 28.04.2023 and out of 16 witnesses, none has been examined so far. In this regard, learned counsel for petitioner has placed reliance upon judgment rendered by Hon'ble the Supreme Court in ***Nandalal Mondal alias Abhay Mondal Versus The State of West Bengal*** (arising out of Special Leave to Appeal (Crl.) No. 12788 of 2023, decided on 03.01.2024). It is submitted that the trial is likely to take some time, accordingly, no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. Learned counsel further submits that except the present case, no other case is there against the petitioner and he 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 willing to furnish security in the form of Fixed Deposit Receipt (F.D.R.) 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.

8. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. He submits that there is sufficient material to show the complicity of the petitioner in the crime. It is further submitted by learned State counsel that in the instant case, the recovery of 20 kgs. of poppy husk and 03 kgs. of opium from the petitioner, falls under the category of “commercial quantity” and hence, the rigors of Section 37 of the NDPS Act, 1985 are attracted. It is also submitted by learned State counsel that in case, the petitioner is extended the benefit of regular bail then there is every likelihood that he

may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, prayer for dismissal of instant petition has been made.

9. However, learned State counsel while referring to the custody certificate has submitted that there is no other case pending against the petitioner and he has undergone actual custody in this case for a period of 1 year, 8 months and 17 days (as on 25.02.2024). It is also conceded by learned State counsel that investigation in the case is complete, challan stands presented and charges have also been framed. It is also not disputed that till date none of the prosecution witnesses has been examined.

10. I have heard learned counsel for the parties; perused the paper book, status report dated 26.02.2024 and custody certificate of the petitioner dated 25.02.2024 filed by State of Punjab, which are already on record.

11. Hon'ble the Supreme Court in the case of ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, SLP (Criminal) No. 6690/2022 decided on 25.01.2023 observed that in case of long custody period, involving quantity recovered to be of commercial nature, where the trial is yet to commence, though charges had been framed, the condition of Section 37 of NDPS Act can be dispensed with. 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 NDPS Act. Similarly, 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 1 year and 6 months and there being no likelihood of completion of trial in the near future. In the case of ***Munasi Masih Versus State of Punjab***, CRM-M-31504-2022, decided on 06.02.2023, this Court granted bail to a first offender from whom commercial quantity of contraband had been recovered and only 2 out of 13 PWs have been examined, by observing that in view of delayed trial, the rigors of Section 37 of NDPS Act can be diluted to an extent and the petitioner can be granted bail, keeping in mind the right to a speedy trial as envisaged under Article 21 of the Constitution of India.

12. Hon'ble the Supreme Court in the case of ***Nandalal Mondal alias Abhay Mondal*** (supra), while considering the bail application of the accused therein who was found in possession of 10000 ML of Codeine Phosphate, which was commercial quantity, granted bail taking into consideration the custody which was more than 1½ year and also considering the fact that the petitioner therein did not have any criminal antecedents and that prolong incarceration would not serve the cause of substantial justice.

13. Considering the aforesaid facts and circumstances and the fact that the petitioner is in custody for a period of 1 year, 8 months and 17 days (as on 25.02.2024); investigation in the case is complete, challan stands presented on 23.11.2022 and even charges have been framed on 28.04.2023, however, the fact remains that during this long period, out of 16 witnesses, none has been examined so far. As per the custody certificate, the petitioner does not have any criminal antecedents and trial in the case is likely to take some time to conclude.

14. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by the petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, it is observed that 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 indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise 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.

15. In view of the above discussion, the instant petition is allowed and the petitioner (Balvir Singh) 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 appear before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial.

16. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs. 1,00,000/- 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.

17. 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.

18. The instant petition is accordingly disposed of.

19. All pending application(s), if any, shall also stand disposed of.

(HARSH BUNGER)
JUDGE

20.03.2024.
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No