

2024.PHHC.158584



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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-41846-2024
Date of Decision: 28.11.2024

Bidesh Rai

..... Petitioner

Versus

Intelligence Officer, Directorate of Revenue Intelligence (Zonal Unit),
Ludhiana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Randeep Singh Waraich (Rana), Advocate
for the petitioner.

Mr. Rajesh Sethi, Advocate,
Ms. Preeti Bansal, Advocate and
Mr. Anshuman Sethi, Advocate
for the respondent.

HARSH BUNGER J. (ORAL)

This is third petition filed under Section 483 Bhartiya Nagrik Suraksha Sanhita, 2023 on behalf of petitioner (Bidesh Rai) for grant of regular bail in criminal complaint case (File No.DRI/LDZU/855/INT-02/2021) dated 07.03.2022 (Annexure P-1), under Sections 8, 20, 27-A, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act'), registered at Revenue Intelligence (Zonal Unit), Ludhiana.

2. The earlier two petitions, i.e. CRM-M-23281-2022 and CRM-M-11970-2024, filed by the petitioner were dismissed by this Court vide orders dated 24.07.2023 and 19.04.2024, respectively.

3. Briefly, the DRI (Zonal Unit), Ludhiana, filed a complaint (F.No.DRI/LDZU/855/INT-02/2021) dated 07.03.2022 (Annexure P-1), before the Judge, Special Court, Ludhiana; wherein, it was stated that a specific intelligence report was received by DRI Unit that Cannabis (*Ganja*) is stored in a godown premises situated at Village Mangli Nichi, Sahnewal, District Ludhiana, which was expected to be removed. The said Intelligence Report was reduced into writing and submitted to the superior officer and thereafter, the afore-said godown premises were searched by the officers of DRI Unit on 08.09.2021. As per the complaint, when the main door of the afore-said premises was knocked, then one person came outside who introduced himself as Shivam Singh son of Gopal Singh. Said Shivam Singh was informed by the DRI officers regarding the purpose of visit and also showed him the search warrant, which was signed by him and after following the due procedure, the officers entered the premises, which was found to be comprised of Ground Floor only in the form of a big hall. Shivam Singh informed that he had taken the said godown on rent from one Jiya Lal, who lives in Dhandari Kalan, Ludhiana. Inside the said premises, three more persons were found, who introduced themselves as Mintu Singh son of Gopal Singh, Arwinder Singh Sidhu son of Jaswinder Singh and Manoj son of Rajesh Kumar Sharma. During the search, 52 brown colour packets containing *Ganja* (Cannabis) were found and each packet weighed approximately 08 kgs. Shivam Singh admitted that each packet contained *Ganja* (Cannabis) and he had procured the same from Berhampur, Odisha.

3.1 After following the due procedure, Ashwani Kumar Kapoor, Senior Intelligence Officer, DRI, Ludhiana (Zonal Unit) was called at the spot and the personal search of aforesaid four persons was carried out; however, nothing objectionable was recovered from personal search.

3.2 Upon weighing the 52 brown coloured packets, it was found that the total weight thereof was 428.13 kgs., having an illicit market value of Rs.85,62,600/-, which was seized after following the due procedure. Consequent to the recovery and seizure of 428.13 kgs. of Cannabis (*Ganja*); statements of the aforesaid four persons in the premises were recorded under Section 67 of the N.D.P.S. Act.

3.3 As per the complaint, during recording of the statement of accused Shivam Singh, at about 10:00 a.m. (09.09.2021), someone was regularly trying to contact him on his mobile phone No.7848816237, which was found in his possession.

3.4 Upon being asked, Shivam Singh informed that Ranjeet Rai and Bidesh Rai, were contacting him for taking the delivery of the consignment for selling the seized *Ganja* (Cannabis) in the local market and settling the accounts. Accordingly, Shivam Singh was asked to communicate with Ranjeet Rai and Bidesh Rai regarding receipt of *Ganja* and he was asked to call them before the gate of Gujranwalan Khalsa College, Rani Jhansi Road, Civil Lines, Ludhiana. As per the complaint, after sometime, two persons arrived in front of the gate of Gujranwalan Khalsa College, Rani Jhansi Road, Civil Lines, Ludhiana, and were identified by Shivam Singh as Ranjeet Rai and Bidesh Rai and brought to the Office of DRI (Zonal Unit), Ludhiana, for questioning. It is mentioned in the complaint that on detailed questioning, both of the persons admitted their role in the illicit trafficking of *Ganja*/Cannabis seized by the DRI from the premises of Shivam Singh and their voluntary statements under Section 67 of the N.D.P.S. Act, were also recorded.

3.5 All the accused persons were arrested and sent to the Central Jail, Ludhiana.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case. It is submitted that the petitioner was not found in conscious possession of any psychotropic substance. It is further submitted that the petitioner is in custody since 09.09.2021; and apart from this case, he is not involved in any other case. It is next submitted that challan in the case stands presented and out of total fourteen cited prosecution witnesses, only one prosecution witness has been examined by now and the case is now fixed for further prosecution evidence before the trial Court for 13.01.2025; thus, the trial is likely to take some time to conclude and no useful purpose would be served by keeping the petitioner behind the bars for indefinite period. It is contended that co-accused, namely Arvinder Singh Sidhu, has already been granted regular bail by a co-ordinate Bench of this Court vide order dated 12.07.2024 (Annexure P-2). It is further contended that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court. Learned counsel submits that the petitioner is also ready to furnish security in the form of Fixed Deposit Receipt (F.D.R.) of Rs.1,00,000/- before the concerned Court, so as to ensure his presence before the Court on each and every date of hearing.

4.1 With the aforesaid submissions, learned counsel for the petitioner has prayed for grant of regular bail to the petitioner.

5. Per contra, learned counsel representing the respondent opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that huge contraband (428.13 kg. of *Ganja*) has been recovered in this case and all the accused persons were arrested. It is further submitted that the recovered contraband falls under the category of “Commercial Quantity” and thus the bar under

Section 37 of N.D.P.S. Act would be attracted. Learned counsel for the respondent further states that there is an apprehension that in the event of grant of bail, the petitioner may abscond to delay the trial. Accordingly, prayer has been made for dismissal of the present petition.

6. I have heard learned counsel for the parties and perused the paper book with their able assistance.

7. In the instant case, although the recovered contraband falls in the category of “Commercial Quantity”, which attracts Section 37 of the N.D.P.S. Act, however, the petitioner has undergone actual custody for a period of more than three years and challan in the case already stands presented. It is noticed that the earlier two petitions, i.e. CRM-M-23281-2022 and CRM-M-11970-2024, filed by the petitioner for grant of bail were dismissed by this Court vide orders dated 24.07.2023 and 19.04.2024, respectively; however, till date, out of total fourteen cited prosecution witnesses, only one prosecution witness has been examined; therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude.

7.1 Further, it is not disputed before this Court that co-accused namely Arwinder Singh Sidhu, has already been granted regular bail by a co-ordinate Bench of this Court vide order dated 12.07.2024 (Annexure P-2).

8. Hon’ble Supreme Court in “***Mohd. Muslim @ Hussain V. State (NCT of Delhi)***”, 2023 AIR (Supreme Court) 1648 held as under:

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive

detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik (2009) 2 SCC 624). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

8.1 Hon'ble Apex Court in case titled **“Umarmia Alias Mamumia v. State of Gujarat”, (2017) 2 SCC 731**, has held delay in criminal trial to be in violation of right guaranteed to an accused under Article 21 of the Constitution of India.

8.2 In **“Manoranjana Singh alias Gupta v. CBI”, (2017) 5 SCC 218**, Hon'ble Apex Court has held that the object of the bail is to secure the attendance of the accused in the trial and 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.

9. Pertinently, appropriate directions can be issued for securing the attendance of the petitioner during the trial.

10. Keeping in view the aforementioned facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate concerned. However, the concerned Intelligence Officer, D.R.I. (Zonal Unit), Ludhiana or the concerned Investigating Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Intelligence Officer/Investigating Officer about his telephone number as well as his address at which he intends to reside during the pendency of case/trial and any change in the address shall also be communicated, forthwith. Petitioner would also furnish his undertaking to the effect that he will not indulge in any illegal activity. The petitioner shall also mark his presence before the concerned Intelligence Officer/Investigating Officer on first Monday of every month till the conclusion of trial and in case the Intelligence Officer/Investigating Officer refuses to mark his presence, he is permitted to make an application before the Illaqa Magistrate, concerned.

11. 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.

12. 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.

- 13. The petition is accordingly disposed of.
- 14. All pending application(s), if any, shall also stand closed.

28.11.2024
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No