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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45993-2023
Date of Decision: 17.05.2024

Sony @ Nikka

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Dhruv Dayal, Addl. A.G., Punjab assisted by
Assistant Sub Inspector Harbans Singh.

HARSH BUNGER J. (ORAL)

1. This is third petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Sony @ Nikka) for grant of regular bail in case bearing FIR No.171 dated 09.07.2022 (Annexure P-1) under Section 22 (B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act') [Section 22 (c) of the N.D.P.S. Act added later on], registered at Police Station City Malout, District Sri Muktsar Sahib.

2. The first petition (CRM-M-58049-2022) was dismissed by this Court vide order dated 30.05.2023 (Annexure P-3) and second petition

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(CRM-M-37998-2023) was dismissed as withdrawn vide order dated 31.08.2023.

3. In pursuance of advance notice served upon the State of Punjab, status report by way of affidavit dated 12.10.2023 of Mr. Fateh Singh Brar, P.P.S., Deputy Superintendent of Police, Sub Division Malout, District Sri Muktsar Sahib has been filed on behalf of State of Punjab, which is already on record.

4. Custody certificate dated 15.05.2024 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

5. Succinctly, the aforesaid case FIR was registered on the complaint of Assistant Sub Inspector Shavinder Singh stating that on 09.07.2022, he, along with fellow officials, was riding in a private car in connection with patrolling and checking of suspicious persons and when they were present near Nagpal Dhaba on Malout-Bathinda GT Road, a clean shaven boy was seen holding a transparent polythene envelope, he was stopped on the basis of suspicion; and tablets were clearly visible in the said transparent polythene envelope, which seemed to be intoxicant tablets. Accordingly, *ruqa* was prepared and sent to the police station along with request to send regular officer at the spot. Thereafter, Sub Inspector Bagga Singh reached at the spot and after complying with the due procedure, the identity of said boy was revealed as Soni @ Nikka (petitioner) and upon carrying out search of the transparent polythene envelope, the following intoxicant tablets were recovered:-



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[containing 10 tablets], total 100 tablets Marka Etizolam Tablets IP Etizola 0.5, bearing batch No. KEC2202A, MFG dt 03/2022 having Expiry Date as 02/2025”

During personal search of petitioner, Rs.11,000/- Indian currency notes were recovered from the front pocket of his T-shirt.

Thereafter, the recovered contraband and the Indian currency notes were sealed and taken into police possession. Accordingly, the aforesaid FIR was registered and the petitioner was arrested.

6. According to the status report, the intoxicant tablets were found to have been containing *Etizolam* (0.49 mg/tablet), as per the report given by the concerned Forensic Science Laboratory; and the recovery falls under the ambit of ‘commercial quantity’.

7. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the instant case. It is submitted that as per FIR, the petitioner is alleged to have been apprehended from outside the Nagpal Dhaba, Malout-Bathinda GT Road on 09.07.2022 at 8:30 P.M., however, he is suffering from a rare disease “*Retinitis Pigmentosa*”, which causes vision impairment and is incurable and a person suffering from this disease loses his vision during darkness (night), hence the petitioner is unlikely to be present on the spot at 8:30 P.M. It is further submitted that the petitioner is also suffering from depression and even if the contents of the instant FIR are taken to be true then also the alleged recovered contraband is ‘*Etizolam*’, which is used for treatment of anxiety disorder, panic disorder and insomnia; and in view of Rule 66 of the N.D.P.S. Rules, any person may possess a reasonable quantity thereof as may be necessary for its genuine scientific requirement or

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genuine medical requirements. Learned counsel for the petitioner submits that there has been non-compliance of the mandatory provisions of Section 50 of the N.D.P.S.; and infact, nothing has been recovered from conscious possession of the petitioner as he was picked up by the police at midnight from his house.

8. Learned counsel for the petitioner very fairly states that the petitioner is involved in one more case, i.e. case bearing FIR No.135 dated 24.10.2019, under Section 15 of the Indian Medical Act, 1956, registered at Police Station City Malout, however, he has been granted bail in the same.

9. Learned counsel for the petitioner submits that the petitioner has already undergone actual custody in this case for a period of one year, ten months and four days (as on 15.05.2024); investigation in the case is complete, challan stands presented on 19.10.2022 and even charges have been framed on 03.12.2022. It is submitted that only one prosecution witness, out of the total fifteen prosecution witnesses, has been examined; 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.

10. Learned counsel for the petitioner submits 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 further submits that the petitioner is also ready 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.



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11. Per contra, learned State counsel opposes the prayer of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the recovered contraband in the instant case falls under the category of 'commercial quantity' and thus, rigors of Section 37 of the N.D.P.S. Act are attracted in this case. While referring to the custody certificate, learned State counsel has submitted that besides the present case, the petitioner is also involved in one more case (FIR No.135 dated 24.10.2019), however, he has been granted bail in the same. Learned State counsel 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.

However while referring to the custody certificate, it is conceded by learned State counsel that petitioner has undergone actual custody in the instant case for a period of one year, ten months and four days (as on 15.05.2024). Learned State counsel further concedes that investigation in the case is complete, challan stands presented and charges have also been framed; and out of total fifteen prosecution witnesses, only one prosecution witness has been examined by now.

12. Learned counsel for the petitioner to rebut the contention of State counsel regarding criminal antecedents of the petitioner, has relied upon the judgment of Hon'ble Supreme Court in "***Maulana Mohd. Amir Rashadi v. State of U.P. and another***", 2012(2) SCC 382 to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The



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relevant portion of the said judgment is reproduced herein below :-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

13. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

14. In the instant case, the petitioner has undergone actual custody for a period of one year, ten months and four days (as on 15.05.2024). Petitioner is not involved in any other case under the N.D.P.S. Act. Investigation in the case is complete, challan stands presented on 19.10.2022 and charges have been framed on 03.12.2022. The first petition filed by petitioner seeking regular bail was dismissed by this Court on 30.05.2023, i.e. almost one year ago, and out of total fifteen prosecution witnesses, only one prosecution witness has been examined by now; therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude.

15. In a recent decision, while considering the bail under the N.D.P.S. Act, the 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.”

16. 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 the N.D.P.S. Act.



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17. 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 one year and six months and there being no likelihood of completion of trial in the near future.

18. 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.

19. In *“Manoranjana Sinh 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.

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

20. As regards the apprehension expressed by learned State counsel that in the event of grant of regular bail, the petitioner may abscond in order to delay the trial, it is observed that in the event of any such conduct, the prosecution can always approach the competent Court for cancellation of bail. Accordingly, 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 causing interference with the progress of trial, it shall be open for the State/Prosecuting Agency/State police to move

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to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

21. 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/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 mark his presence before the concerned Police Station/Station House Officer on every alternate Monday till the conclusion of trial and in case the Station House Officer refuses to mark his presence, he is permitted to make an application before the Illaq Magistrate, concerned.

22. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.2,00,000/- 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.

23. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded



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above are only for consideration of the prayer for bail at this stage.

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

17.05.2024
Apurva

(HARSH BUNGER)
JUDGE

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