

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-46391-2023
Date of Decision: 23.04.2024

Kulwinder Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rahul Rampal, Advocate
for the petitioner.

Mr. Ankit Grewal, DAG, Punjab.

HARSH BUNGER J. (ORAL)

1. This is second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Kulwinder Singh) for grant of regular bail in case bearing FIR No.36 dated 25.02.2020 (Annexure P-1) under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act'), registered at Police Station Raman, District Bathinda.
2. The first petition (CRM-M-30290-2022) was dismissed as withdrawn vide order dated 27.07.2023 (Annexure P-4).
3. In pursuance of an advance notice served upon the State of Punjab, status report by way of affidavit dated 28.01.2024 of Mr. Rajesh Snehi Batta, P.P.S., Deputy Superintendent of Police, Sub Division Talwandi Sabo, District Bathinda has been filed on behalf of State of Punjab, which is already on record.
4. Custody certificate dated 26.02.2024 of the petitioner is filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

5. Briefly, the aforestated case FIR (Annexure P-1) was registered on the basis of *ruqa*, wherein it was stated that on 25.02.2020, Head Constable Randhir Singh, along with Baljinder Singh 200, Constable Rajdeep Singh, PHG Gurtej Singh and PHG Samsheer Singh, was going towards Village Narang *via* main refinery road in connection with checking of suspected persons; and at about 4:15 P.M., when police party reached near VRC Mixture Plot then they saw one black motorcycle coming from the front, on which three persons were riding, who upon seeing the police party got perplexed and tried to turn the motorcycle back, however, they all fell down due to slip; and the person sitting in the middle threw one black polythene from his right hand, out of which, some intoxicant tablets got scattered on the ground. Thereafter, the police party apprehended the aforesaid persons and inquired about their names and addresses, whereupon the driver of motorcycle disclosed his name as Gurtej Singh @ Babu son of Bhupa Singh resident of Torkhanwala; the person sitting in the middle was a disabled person and he told his name as Falel Singh son of Billu Singh and the pillion rider revealed his name as Kulwinder Singh (petitioner) son of Falel Singh resident of Laleana. Due to his inability to conduct investigation under the N.D.P.S. Act, Head Constable Randhir Singh informed his senior officials about the facts and circumstances of the case; whereupon, Assistant Sub Inspector Gobind Singh, In-Charge Police Post Refinery, Police Station Raman, District Bathinda, reached the spot.

6. Thereafter, by following the due procedure, the scattered intoxicant tablets were collected and the search of polythene bag was conducted; and total 40 strips labeled as *TREDOL-100, B.No. TDP19045, MFG NOV., 2019, EXP OCT., 2022* (each strip containing 10 tablets as such 400 intoxicant tablets) were recovered; which were being carried by the

aforesaid accused persons without any permit or license. The recovered contraband was converted into a parcel and sealed and the motorcycle was taken into police possession.

7. According to the status report, the intoxicant tablets were found to have been containing *Tramadol Hydrochloride* (99.12 mg/tablet), as per the report given by the concerned Forensic Science Laboratory; and the same falls under the 'commercial quantity'.

8. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the present case. It is submitted that the alleged recovery falls under the commercial quantity but while referring to the FIR (Annexure P-1), he submits that the polythene bag, from which the alleged recovery has been effected, is stated to have been thrown by co-accused Falel Singh, who was sitting in the middle of the motorcycle. It is further submitted that another co-accused, namely Gurtej Singh @ Babbu, who was driving the motorcycle, has already been granted regular bail by a co-ordinate Bench of this Court vide order dated 04.09.2023 passed in CRM-M-42518-2023 (Annexure P-2).

9. Learned counsel for the petitioner very fairly states that the petitioner is involved in two more cases, i.e. case bearing FIR No.3 dated 24.12.2020, under Section 3 RP (4P) 147 Railway Act, registered at Police Station Sirsa, and FIR No.183 dated 07.08.2017, under Sections 380 and 457 of the Indian Penal Code, registered at Police Station Raman; however, no other case under the N.D.P.S. Act, except the present one, is pending against the petitioner.

10. Learned counsel for the petitioner submits that the petitioner is in custody since the day of his arrest and he has undergone actual custody in the instant case for a period of two years and eight days (as on 26.02.2024);

investigation in the case is complete, challan stands presented on 07.08.2020 and charges have been framed on 13.08.2020. Learned counsel for the petitioner further submits that all the prosecutions witnesses in the instant case stand examined and now the case is fixed for 03.05.2024 before the trial Court, for recording of the statement of accused under Section 313 of the Code of Criminal Procedure; and thereafter the petitioner has to lead evidence in his defence. Hence, 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.

11. Learned counsel for the petitioner contends that the bail application under Section 439 of the Code of Criminal Procedure, filed on behalf of the petitioner before the Court of learned Judge Special Court, Bathinda has been wrongly declined vide order dated 11.05.2022 (Annexure P-3). 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.

12. 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 trial in the case is about to conclude as all the prosecution witnesses already stand examined. It is further 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 two more cases (FIR No.3 dated 24.12.2020 and FIR No.183 dated 07.08.2017), although no other case under the N.D.P.S. Act is pending against him. 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 two years and eight days (as on 26.02.2024). Learned State counsel admits the stage of the trial and further concedes that co-accused namely Gurtej Singh @ Babbu has already been granted the concession of regular bail vide order dated 04.09.2023 passed by a co-ordinate Bench of this Court in CRM-M-42518-2023.

13. Learned counsel for the petitioner, in rebuttal, 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 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."

14. 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.

15. In the instant case, the petitioner was arrested on 25.02.2020 and as per custody certificate, the actual period undergone by him is two years and eight days (as on 26.02.2024). Investigation in the case is complete, challan stands presented on 07.08.2020 and charges have been framed on 13.08.2020. Although, all the prosecution witnesses in this case are stated to have already been examined, however, the defence evidence is still to be recorded; therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude. Moreover, co-accused namely Gurtej Singh @ Babbu has already been granted the concession of regular bail vide order dated 04.09.2023 passed by a co-ordinate Bench of this Court in CRM-M-42518-2023.

16. Further, the alleged recovery in this case, falls under the category of ‘commercial quantity’, thus rigors of Section 37 of the N.D.P.S. Act are attracted in this case. However, while dealing with Section 37 *ibid*, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence.

17. 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.”

18. In the peculiar facts of the present case and on an assessment of material on record, I am of the *prima facie* view at this stage that the petitioner may not have committed the alleged offence as the polythene bag from which the contraband was recovered is stated to have been thrown by co-accused Falel Singh, who was sitting in the middle of the motorcycle, and not by the petitioner. The issue as regards conscious possession of the contraband by the petitioner would be a subject matter of trial. Concededly, the petitioner is not involved in any other case under the N.D.P.S. Act nor

there is anything on record to suggest that petitioner is likely to commit an offence under the N.D.P.S. Act, while on bail.

19. 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.

20. 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.

21. 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.

22. 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.

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

23. As regards the apprehension expressed by learned State counsel that in the event of arrest 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 to the trial Court for cancellation of the bail, which shall be decided by the trial Court on merits.

24. Keeping in view the aforementioned facts and circumstances and in the light of judgment in *Maulana's case (supra)*, 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.

25. In addition, the petitioner (or anyone on his behalf) shall prepare a Fixed Deposit Receipt (F.D.R.) in the sum of Rs.50,000/- 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.

26. 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.

27. The petition is accordingly disposed of.

28. All pending application(s), if any, shall also stand closed.

23.04.2024

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No