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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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Date of Decision: 23.04.2024

Pritpal Singh Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sunil Chadha, Senior Advocate assisted by
Mr. Raghav Chadha, Advocate,
Mr. Harshiv Kundra, Advocate and
Mr. Navtej Singh, Advocate
for the petitioner.

Mr. Sartaj Singh Gill, Sr. D.A.G., Punjab.

HARSH BUNGER J. (ORAL)

CRM-14695-2024

1. This is an application filed for placing on record relevant documents as Annexures P-5 to P-7.
2. For the reasons mentioned in the application, the same is allowed and Annexures P-5 to P-7 are taken on record, subject to all just exceptions.
3. Application is accordingly disposed of.

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CRM-17306-2024

1. This is an application filed for placing on record judgment dated 15.04.2024 as Annexure P-8.
2. For the reasons mentioned in the application, the same is allowed and judgment dated 15.04.2024 as Annexure P-8 is taken on record, subject to all just exceptions.
3. Application is accordingly disposed of.

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Criminal Misc. Applications are allowed as prayed for.

CRM-M-56535-2023

1. Petitioner (Pritpal Singh) has filed this second petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the petitioner in case FIR No.65, dated 20.09.2022, under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Banga, District SBS Nagar (Annexure P-1).
2. The earlier petition filed by the petitioner seeking regular bail was dismissed as withdrawn vide order dated 19.05.2023 (Annexure P-4).
3. Status report by way of affidavit dated 28.11.2023 of Mr. Sarwan Singh Bal, P.P.S., Deputy Superintendent of Police, Sub Division Banga, District Shaheed Bhagat Singh Nagar, has been filed on behalf of State of Punjab, which is already on record.
4. Custody certificate dated 18.04.2024 of the petitioner has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

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5. Briefly, the aforesaid case FIR was registered on the basis of a *ruqa* prepared by ASI Ram Lal, wherein it was stated that on 20.09.2022, he along with police party was present in the area of Bridge Canal, Ladhana Jhikka, in connection with patrolling and checking of bad elements by laying a picket there and the vehicles were being checked. At about 5:50 P.M., one car make Indica (color silver) was seen coming from the side of village Mahil Gehla and the driver of the said car was stopped, who threw one polythene towards his right side after opening the window of his car and thereafter tried to turn back, however, the driver of the said car was apprehended by ASI Ram Lal with the help of the police party. Thereafter, ASI Ram Lal introduced himself to the apprehended person, and enquired about his details, who disclosed his name as Pritpal Singh (petitioner).

After carrying out the search, one polythene envelope was recovered, which contained *heroin* and in another polythene envelope, loose pink tablets were recovered. On weighing the aforesaid recovered *heroin*, the same was found to be 20 grams and the aforesaid recovered loose tablets, on counting, were found to be 500 tablets. Thereafter, the petitioner was formally arrested and subsequently on 21.09.2022, the petitioner-Pritpal Singh along with case property was produced before the Court of learned Judicial Magistrate Ist Class/Illaqa Magistrate, S.B.S. Nagar.

6. As per the status report, during the investigation of the petitioner, he suffered a disclosure statement, wherein he stated that he used to bring *heroin* and intoxicated tablets from one Paramjit Singh @ Pamma and the recovered *heroin* and intoxicated tablets were also procured from

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said Paramjit Singh @ Pamma and he was going to Banga to sell the same. On the basis of the aforesaid disclosure statement, the aforesaid Paramjit Singh @ Pamma was also nominated as an accused and offence under Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was added in this case/FIR vide DDR No.28 dated 23.09.2022.

The recovered substances were sent for examination to the Regional Testing Forensic Science Laboratory, Ludhiana and as per the Forensic Science Laboratory Report, the recovered contraband was found to be “Diacetylmorphine” in parcel containing *heroin* and “Alprazolam” in parcel containing 500 loose tablets.

7. Learned Senior 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 petitioner was arrested on 20.09.2022 and since then, he is in custody i.e. for more than one year and six months. It is further submitted that the investigation in this case is complete; challan stands presented on 06.03.2023; charges have been framed on 22.03.2023 and trial is going on. Learned Senior counsel submits that although the prosecution evidence already stands concluded and the statement under Section 313 stands recorded, however, it is submitted that the petitioner is claiming false implication in this case by police officials and for the said purpose, an application, moved by the petitioner, has already been allowed by the trial Court for preserving the call details of all the police officials, vide order dated 03.05.2023, passed by learned Judge, Special Court, Shaheed Bhagat Singh Nagar (Annexure P-7). Learned Senior Counsel, while referring to the

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aforesaid order dated 03.05.2023, submits that in order to substantiate the said plea of false implication, he is required to examine the relevant witnesses and also to produce the relevant record, therefore, the conclusion of trial is likely to take some time and no useful purpose would be served by keeping the petitioner behind the bars. It is further submitted that as per the status report filed by the State, the petitioner is stated to be involved in four other cases, however out of the said four cases, he already stands acquitted in two cases bearing FIR No.102, dated 02.07.2019 and FIR No.224, dated 17.12.2004. As regards another FIR No.102 dated 25.05.2006, registered in Police Station Mahilpur is stated to have been cancelled on 06.02.2008 and as far as, FIR No.61, dated 02.07.2019 is concerned, the petitioner is stated to be on bail. It is submitted by learned Senior counsel that in the said FIR No.61 dated 02.07.2019, nothing was recovered from the petitioner and he was arrayed as a co-accused in the said case only on the basis of disclosure statement of the main accused. Learned Senior 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, Shaheed Bhagat Singh Nagar has been wrongly declined vide order dated 22.11.2022 (Annexure P-3). Learned Senior 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 Senior counsel further submits that the petitioner is also willing to furnish heavy 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.

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Accordingly, prayer for grant of regular bail is made.

8. 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. Learned State counsel has also submitted that the trial is proceeding on a decent pace and the same is likely to conclude shortly. It is submitted that the petitioner is involved in other cases under the Narcotic and Psychotropic Substances Act, 1985. 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, learned State counsel has not disputed the fact that the investigation in this case is complete; challan stands presented; charges have been framed and trial is going on. It is also not disputed that the petitioner has undergone actual custody in this case for a period of one year, six months and twenty eight days (as on 18.04.2024). Status of other cases against the petitioner is also not disputed.

9. Learned Senior counsel for the petitioner, in rebuttal, has submitted that although the petitioner is involved in other cases, however, in two cases, petitioner already stands acquitted, in one case, petitioner is on bail and one case was got cancelled. Learned Senior counsel has further 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

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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.”

10. I have heard learned counsel for the parties and perused the paper book, status report dated 28.11.2023 as well as custody certificate dated 18.04.2024.

11. In the instant case, the petitioner was arrested on 20.09.2022 and since then he is in custody; challan stands presented on 06.03.2023; charges were framed on 22.03.2023 and trial is going on. Although the prosecution evidence already stands concluded and statement under Section 313 stands recorded, however, considering the fact that the petitioner has raised a ground of false implication by police officials however, to substantiate the same, an application for preserving the call details of the police officials was filed by the petitioner, which stands allowed by learned trial Court vide order dated 03.05.2023 (Annexure P-7). Necessarily the plea of false implication has to be established as per law, therefore, this Court has reason to believe that the trial in this case is likely to take some time to conclude.

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12. Further, the alleged recovery effected from the petitioner herein, 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. 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.

13. 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

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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.”

14. 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 recovery of the contraband has been made from the ground. The issue as regards conscious possession of the contraband by the petitioner would be a subject matter of trial. Further, there is nothing on record to suggest that petitioner is likely to commit an offence under the N.D.P.S. Act, while on bail.

15. 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.

16. 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

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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.

17. 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.

18. 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.

19. As regards the apprehension expressed by learned State counsel that 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.

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20. In view of the above discussion 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/Illaqa 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 alternate Monday of every month till the conclusion of trial and in case the SHO refuses to mark his presence, he is permitted to make an application before the Illaqa Magistrate, concerned.

21. 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.

22. 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.

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23.
- The petition is accordingly disposed of.
24.
- All pending application(s), if any, shall also stand closed.

23.04.2024
Himani

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned

:

Yes/No
2. Whether reportable

:

Yes/No