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

**CRM-22963-2024 in/and
CRM-M-58096-2023
Date of Decision: 28.05.2024**

Rajesh Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Dheeraj Narula, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

HARSH BUNGER J. (ORAL)

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This is an application for placing on record copy of bail order dated 04.11.2019, passed by learned Special Judge in bail application No.1762 of 2019 and copy of bail order dated 26.07.2018, passed by the Co-ordinate Bench of this Court in CRM-M-22789-2018 as Annexures P-2 and P-3.

For the reasons mentioned in the application, the same is allowed and the bail orders dated 04.11.2019 and 26.07.2018 are taken on record as Annexures P-2 and P-3 respectively, subject to all just exceptions.

Accordingly, the application stands disposed of.

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1. This is second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Rajesh Kumar) for grant of



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regular bail in case bearing FIR No.53 dated 29.01.2022, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the N.D.P.S. Act'), registered at Police Station City Sirsa, District Sirsa.

2. The first petition (CRM-M-39163-2022) was dismissed as withdrawn vide order dated 24.04.2023

3. Fresh Status report by way of an affidavit dated 19.12.2023 of Mr. Dalip Singh, Deputy Superintendent of Police, HSNCB Unit, Sirsa has been filed on behalf of State of Haryana, which is already on record.

4. Custody certificate dated 27.05.2024 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 29.01.2022 on the complaint of Assistant Sub Inspector Harmeet Singh who stated that on 29.01.2022, he, along with his fellow officials, was patrolling in a Govt. vehicle for checking suspicious elements. Then, a secret information was received from an informer that Vinod Kumar @ Bodi and Rajesh Kumar, on their Scooty (Hero Maestro) bearing No. HR-24AC-0276 (color red) were carrying huge amount of *ganja* and were coming to sell the same in Sirsa City near water work shop. Accordingly, a *nakabandi* was arranged, thereafter, from the south direction of the *nakabandi*, one two-wheeler was seen coming on which two persons were sitting, after they were asked to stop the vehicle, the driver tried to turn back the Scooty, but the vehicle stopped due to some technical snag. On asking, the driver told his name as Vinod Kumar @ Bodi



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and the person who was sitting behind, disclosed his name as Rajesh Kumar @ Gandhi. A notice was served under Section 50 of the N.D.P.S. Act. Thereafter, both the accused persons told the police officials that they want their Scooty and bags to be searched by some Gazetted Officer. Upon their request, Anil Kumar Mehta, Regional Director Cotton Research Centre, Sirsa was called at the spot, who apprised the accused persons about his identity. After complying with the due procedure, personal search of the accused persons was conducted and nothing was found from them, but when the two bags on the said Scooty were checked, 20 kg *ganja* was recovered from each bag (in total 40 kg *ganja*).

Thereafter, the recovered contraband was sealed and taken into police possession. Accordingly, the aforesaid FIR was registered.

6. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the instant case only on the basis of the disclosure statement of the co-accused. It is submitted that the petitioner has nothing to do with the alleged offence in the present FIR. Learned counsel for the petitioner further submits that one co-accused namely Sonu has already been granted the concession of regular bail vide order dated 26.08.2022, in CRM-M-11463-2022, passed by the Co-ordinate Bench of this Court (AnnexureA-1).

7. Learned counsel for the petitioner submits that the petitioner is in judicial custody since 24.05.2022 and has already undergone actual custody in this case for a period of two years and four days (as on 27.05.2024); investigation in the case is complete, challan stands presented on 22.07.2022



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and supplementary challan stands presented on 13.01.2023 and even charges have been framed on 18.08.2022. It is submitted that only three prosecution witnesses, out of the total 36 prosecution witnesses, have been examined so far; 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.

8. 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.) 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. Accordingly, prayer for grant of regular bail is made.

9. 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 was found to be *ganja*, as per the report given by the Regional Forensic Science Laboratory, Hisar and the same 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.398 dated 07.07.2015 and FIR No.399 dated 18.10.2019), however, he has been granted bail in both the cases. Learned State counsel further states that there is an apprehension that in the event of



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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 four days (as on 27.05.2024). Learned State counsel further concedes that investigation in the case is complete, challan and supplementary challan stand presented and charges have also been framed; and out of total 36 prosecution witnesses, only three prosecution witnesses have been examined by now.

10. 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 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."

11. 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.



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12. In the instant case, the petitioner has undergone actual custody for a period of two years and four days (as on 27.05.2024). Investigation in the case is complete, challan and supplementary challan stand presented on 22.07.2022 and 13.01.2023 respectively and charges have been framed on 18.08.2022. The first petition filed by petitioner seeking regular bail was dismissed as withdrawn on 24.04.2023, i.e. one year ago, and out of total 36 prosecution witnesses, only three prosecution witnesses have 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.

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



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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.”

14. 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.

15. 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.

16. 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



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Constitution of India.

17. 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.

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

19. 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

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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 first Monday of every month 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 Illaqa Magistrate, concerned.

20. 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.
21. 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.
22. The petition is accordingly disposed of.
23. All pending application(s), if any, shall also stand closed.

28.05.2024
Himani

(HARSH BUNGER)
JUDGE

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