



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CRM-M-55285-2024 (O&M)
Decided on : 19.12.2024

MUBEEN KHAN @ MUBIN

. . . Petitioner(s)

Versus

STATE OF HARYANA

. . . Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mohd. Zeeshan Khan, Advocate for the
petitioner(s).

Mr. Brijesh Sharma, AAG, Haryana.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 483 BNSS has been invoked for grant of regular bail to the petitioner in case FIR No.301 dated 23.10.2022 under Section 21(b) of NDPS Act, 1985, registered at Police Station Sector 65, District Gurugram.

2. The translated version of the FIR is reproduced below:-

“To SHO, Police Station Sector 65 Gurugram, Jai Hind. Today I, PSI Manoj kumar SDP UNIT SECTOR 17 along with my colleagues ASI Hardeep Singh no.393 ,HC Shakti Singh no.552, and Constable Mandeep 5228, Constable Balraj no.5595, •Constable Yudhvir no.3025 Govt. vehicle HR26GV2159 Bolero driver constable Bhagwan Dev no.3177, were patrolling near Badshahpur Bus Stand, where secret informer gave information that Sahib Khan s/o Waheed Khan r/o village Kansali Police station Nagina District- Nuh Mewat who is travelling in his vehicle no.HR55X5646 mark Hyundai accent white colour carrying the contraband/smack intoxication drug from delhi and will go through the gurugram - sohna road to his village while saving the toll will pass via the bhondsi jail road. After dismissing the informer and informing the colleagues about the situation, Duty Officer Sh. Vivek Aggarwal AETO-DETC EXCISE EAST GURUGRAM was informed on phone and notice u/s 42 NDPS Act was sent through Constable Mandeep. And blockade/barriers were started at Jail road, approximately after 1:30 hrs a car was seen approaching toward barricades while vehicle number was shown visible it appears to be HR55X5646 to which me, PSI gave indication to vehicle driver to stop the car on which vehicle driver stopped the car and parked it locked from inside. In the meantime Duty Officer Vivek Aggarwal AETO-DETC EXCISE EAST GURUGRAM and Const. Mandeep came present, and Duty Officer Vivek Aggarwal gave me proper instructions and I was searched byb ASI Hardeep Singh no.393 in his presence. And after a lot of efforts the driver unlocked the vehicle, immediately me PSI with



my colleagues controlled the driver and after asking name and address he told his name Sahib Khan s/o Waheed Khan r/o village Kansali P.S: Nagina District: Nuh Meat, to whom me PSI gave him notice u/s 50 and told him that youn are suspected of having intoxicated substance that is why your search is must. You have the legal right to be searched in front of any Gazetted Officer. On which sahib khan gave written reply after receiving the notice that he want to get searched in front of the Gazetted officer, Notice was seen by Sh. Vivek Aggarwal on the instructions of Duty Officer the Driver and the vehicle was searched and a polythene bag of something similar to smack which has smell of intoxication was recovered from the Dashboard of the vehicle and after investigation officer should be sent to the spot and higher authorities should be informed.”

3. Learned counsel for the petitioner *inter alia* submits that allegedly 99.5 grams of heroin was effected from the co-accused, which is of non-commercial quantity and the petitioner has been falsely implicated in this case. He also submits that the petitioner has been nominated on the basis of disclosure statement of co-accused. He further submits that the petitioner has undergone an actual custody of 03 months and 10 days and there are five other cases pending against him, however in four cases, he is on bail and none of the case is under the NDPS Act. He also submits that the co-accused from whom the recovery was effected has been granted concession of regular bail by Co-ordinate Bench of this Court vide order dated 27.04.2023 passed in CRM-M-7921-2023.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He has filed custody certificate in Court today and the same is taken on record. As per custody certificate, the petitioner has undergone an actual custody of 03 months and 10 days and there are five other cases pending against him, however in four cases, he is on bail and none of the case is under the NDPS Act. He on instructions from the concerned investigating officer submits that challan was presented on 06.07.2024 and charges were framed on



17.12.2024. He also submits that out of a total of 25 prosecution witnesses, none has been examined till date. He however, submits that in view of the serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, recovery is of non-commercial quantity and challan was presented on 06.07.2024 and charges were framed on 17.12.2024 and out of a total of 25 prosecution witnesses, none has been examined till date. The petitioner has undergone an actual custody of 03 months and 10 days and there are five other cases pending against him, however in four cases, he is on bail and none of the case is under the NDPS Act and co-accused from whom the recovery was effected has been granted concession of regular bail by Co-ordinate Bench of this Court vide order dated 27.04.2023 passed in CRM-M-7921-2023. The conclusion of trial will take a considerable period and further detention of the petitioner will not serve any useful purpose and will be violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle "Bail is a rule, jail is an exception" as elucidated in the judgment of Apex Court in **"Dataram Singh vs. State of Uttar Pradesh and another", (2018) 3 SCC 22.** Therefore, this Court is of the considered view that further incarceration of the petitioner will not serve any purpose.

7. As regards the submission of learned State counsel that petitioner is involved in other/one more criminal case(s), reference is placed upon the judgment of the Hon'ble Supreme Court in **Maulana Mohd. Amir**



Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382 in which, it is held 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/another case(s). 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.”

8. Without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any police officer or tamper with the evidence.



9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

19.12.2024
Kavita

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No