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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-29717-2024 in/and
CRM-M-60588-2023
Date of Decision: 08.08.2024

Pawan Kumar Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

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

Mr. Nirmaljit Singh Diwana, Sr. DAG, Punjab.

HARSH BUNGER J. (ORAL)

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This is an application filed for placing on record the order dated
31.08.2022 passed in CRM-M-22793-2022 as Annexure A-1.

For the reasons mentioned in the application, the same is
allowed as prayed for and Annexure A-1 is taken on record, subject to all
just exceptions.

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1. Petitioner (Pawan Kumar) has filed this third petition under
Section 439 of the Code of Criminal Procedure seeking grant of regular bail
to the petitioner in case FIR No.0231 dated 01.10.2022, under Section

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22 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, and Section 224 of the Indian Penal Code, 1860 (Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 added later on) registered at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib.

2. The earlier petitions (CRM-M-58573-2022 and CRM-M-35317-2023) were dismissed as withdrawn vide orders dated 16.03.2023 and 11.09.2023 (Annexure P-3).

3. Custody certificate dated 06.08.2024 of the petitioner has been filed by learned State counsel in Court today, which is taken on record, subject to all just exceptions.

4. Status report dated 11.01.2024 by way of affidavit of Satnam Singh, PPS, Deputy Superintendent of Police, Sub Division, Sri Muktsar Sahib, on behalf of the respondent/State of Punjab is already on record.

5. Briefly, as per the aforesaid FIR, on 30.09.2022, when the police party headed by Sub Inspector Dalbir Singh was patrolling for checking the suspicious persons and was present at Jalalabad Road near Yadgari Gate, then one car (Santro-red color) was seen coming from Jalalabad side, and when SI Dalbir Singh signaled the car to stop, the driver of the car slowly tried to turn it back but the car however stopped and two persons alighted from the car and tried to run away but SI Dalbir Singh with the help of fellow officials apprehended the aforesaid persons and inquired from them, whereupon the driver of car disclosed his name as Sukhjinder Singh @ Sukhi s/o Iqbal Singh and the second person disclosed his name as Sarabjit Singh s/o Gurmail Singh. Since SI Dalbir Singh suspected some intoxicant articles in Santro car and since he was local rank and was not

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authorized to proceed further; accordingly, Assistant Sub Inspector Balwinder Singh was called at the spot, who introduced himself to the aforesaid two persons and also inquired about their names and addresses. Thereafter, the aforesaid persons were made aware of their rights to get their personal search as well as search of the car (since some intoxicating articles were suspected therein) to be conducted in the presence of any Gazetted Officer or Magistrate. On this, the apprehended persons expressed their desire to get their search conducted by any Gazetted Officer. Accordingly, DSP Jagdish Kumar reached the spot and the search was carried out as per the procedure and 13980 tablets of Clobedol-100 SR were recovered. Accordingly, the aforesaid case FIR was registered.

6. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case only on the basis of the disclosure statement made by the co-accused who were allegedly apprehended at spot. It is submitted by learned counsel for the petitioner that the petitioner was not named in the FIR and apart from that, no intoxicant substance has been recovered from the conscious possession of the petitioner. Learned counsel for the petitioner submits that there has been non-compliance of the mandatory provisions of the N.D.P.S. Act.

6.1 Learned counsel for the petitioner submits that the petitioner was arrested in the instant case on 01.10.2022 and has already undergone actual custody in this case for a period of one year ten months and two days (as on 06.08.2024); investigation in the case is complete, challan stands presented on 29.03.2023 and even charges have been framed on 20.05.2023.

It is submitted that only 06 prosecution witnesses, out of the total 34

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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. It is submitted 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.2,00,000/- 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.

7. 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 status report, learned State counsel has submitted that besides the present case, the petitioner is also involved in one more case FIR No.56 dated 25.03.2022, under Section 22 (C) of the N.D.P.S. Act. 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.

7.1 However while referring to the custody certificate, it is conceded by learned State counsel that petitioner was arrayed as an accused on basis of disclosure statement of co-accused and he has already undergone actual custody in the instant case for a period of one year ten months and two days (as on 06.08.2024). Learned State counsel further concedes that

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investigation in the case is complete, challan stands presented on 29.03.2023 and the charges have been framed on 20.05.2023; and out of total 34 prosecution witnesses, only 06 prosecution witnesses have been examined till date.

7.2 As regards the submission of learned State counsel that petitioner is involved in one more criminal case, learned counsel for the petitioner submits that the petitioner is on bail in the said case and he relies 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 case. 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. 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.

9. In the instant case, the petitioner has been arrayed as accused on the basis of disclosure statement of co-accused and he has already undergone actual custody for a period of one year ten months and two days (as on 06.08.2024). Investigation in the case is complete, challan stands

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presented on 29.03.2023 and charges have been framed on 20.05.2023; and out of total 34 prosecution witnesses, only 6 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.

10. 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.

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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.”

11. 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.

12. 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.

13. 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.

14. 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

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it is probable that the party will appear to take his trial.

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

15. 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/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 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.

15.1. 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.

16. As regards the apprehension expressed by learned State counsel

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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 behavior 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.

17. 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.
18. The petition is accordingly disposed of.
19. All pending application(s), if any, shall also stand closed.

08.08.2024
Himani

(HARSH BUNGER)
JUDGE

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