

2024:PHHC:172433

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-M-64562-2024

Date of Decision: 20.12.2024

PANCHU

.....PETITIONER

VERSUS

THE STATE OF HARYANA

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhimanu, Advocate
for the petitioner

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 528 BNSS,2023, praying for modification of order dated 25.11.2024 (Annexure P-3) passed by Ld. ASJ, Faridabad in connection with FIR No. 674 of 2024 dated 24.08.2024 registered under section 15 Narcotics Drug Psychotropic Substance Act, 1985(In short NDPS Act) at Police Station Sector 58, District Faridabad.

2. It is contended by learned counsel for the petitioner that FIR no. 674 was registered on a written complaint dated 24.08.2024 against the petitioner alleging to have been involved in business of selling Doda Chura Post (Bhukkhi) was found in the possession contraband namely poppy-husk

weighing 18.886 Kgs. Thereafter, challan was not presented before the trial court within period of sixty days pursuant to which, the petitioner filed an application under section 187(3) BNSS,2023 seeking default bail which was dismissed vide order dated 25.10.2024 on the ground that police was granted an extension of one month to file the challan.

3. He further contends that after passing of the one month granted as extension, no challan was filed which compelled the petitioner to again file an application for default bail which was allowed vide order dated 25.11.2024(Annexure P-3) with two arbitrary conditions i.e. no application seeking exemption shall be entertained and the prosecution would be at the liberty to move for cancellation of bail/recall of the order.

4. He vehemently contends that the conditions stipulated by the trial court are arbitrary and unlawful since no one can assume the upcoming inevitable circumstances which may not allow the petitioner in future to appear before the trial court. Moreso, the law presumes an accused to be innocent till the guilt is proved beyond reasonable doubt and any condition imposed has to be reasonable and acceptable in the facts and circumstances of the case and should not defeat the order of the grant of the bail.

5. Heard counsel for the petitioner at length.

6. An accused cannot as a matter of right seek exemption from personal appearance. The Court has to consider the grounds for exemption and under facts and circumstances of the case, has to exercise its discretion judiciously and decide whether in that particular case, the accused may be granted exemption from personal appearance. Mere fact that he is on bail does not give him an absolute right for personal exemption. The Court has to take into consideration the nature of the offence, the necessity of personal

presence of the accused at the time of evidence and if satisfied, may exempt his presence.

7. Classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest. It would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

8. The instant case pertains to default bail wherein the petitioner is alleged to have found with poppy husk measuring 18.886 Kg and the police authorities while having lackadaisical approach have failed to file challan twice despite given extension of time of one month. Since the offence involved is grievous in nature and drug peddling, being the rising concern for the society at large cannot be dealt with leniently. Therefore in the light

of above stated facts, the court does not find any cogent reason to interfere with the order of the trial court.(Annexure P-3) and the same is upheld.

9. Dismissed.

20.12.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No