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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARHCRM-M-18734-2024 (O&M)
Date of Decision: 13.02.2025

ASHOK KUMAR @ SHOKI

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate, Ms. Supriya Arora, Advocate
and Mr. Nitin Sachdeva, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in case bearing FIR No. 103 dated 08.05.2023 (Annexure P-1) registered under Sections 15(c), 27(a) of NDPS Act 1985 and Sections 186, 307, 332, 353, 420 and 427 of Indian Penal Code, at Police Station Uchana, District Jind.

2. Brief facts of the case are that on 08.5.2023, ASI Avtar Singh along other police officials were present near Khatkar Toll Plaza in connection with patrolling and crime detection duty when they received an information that Jitender Singh alias Happy and Gurpeet Singh after loading huge quantity of Dodapost (poppy husk) from Rajasthan in their volkswagon car bearing registration No.HR-26BW-5174 are going to Cheema Punjab and if immediate raid is conducted, they can be apprehended. Notice under Section 42 of the NDPS Act was sent and ASI Avtar Singh informed ASI Sukhdev Singh, Incharge CIA Staff about the information. Thereafter, ASI Sukhdev Singh along

With SPO Sandeep reached at Khatkar Toll Plaza in private vehicle. In the

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meantime, one car being driven at fast speed was seen coming. On reaching at Toll Plaza, ASI Avtar Singh signalled the car driver to stop the vehicle, but the car driver while driving the car at fast speed, tried to run over the employees with intention to kill them. They saved their lives by jumping here and there. Incharge CIA Sukhdev Singh tried to stop the said vehicle by parking his Balero Camper in the way of the car. However, the driver of the car hit the vehicle in Bolero Camper due to which the vehicle was damaged and it stopped there. The car driver and boy sitting on the next seat tried to run away but were apprehended. On enquiry, they disclosed their names as Jatinder Singh alias Happy and Gurpreet alias Kalu residents of District Sangrur. On checking the damaged vehicle Wolkswagon Jetta No. HR-26BW-5174, its front number plate was found broken. One number HR-26BW-5174 was displayed on one side and RJ14CP-0313 on the other. Thereafter, notice u/s 50 of the NDPS Act was served upon Jatinder Singh alias Happy and Gurpreet alias Kalu and search of vehicle No.HR-26BW-5174 was conducted and 7 bags of black colour were recovered from the rear seat of the vehicle, 6 plastic bag (02 black colour and 04 white colour) were also recovered from the back (dicky) of the vehicle. On checking, total 175 kgs of *Dodapost* was recovered from all the 13 bags. Two numbers plate were also recovered from under the driver's seat of the vehicle bearing number DLA-CAT-0221. Recovered fake number plates, total 13 plastic bags of Doda post and two damaged vehicle were taken into police possession. Petitioner-accused Ashok was also arrested. After completion of investigation, final report under Section 173 Cr.P.C. was filed in the court.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and he is in custody

Since 17.07.2023 and in spite of passing of more than 18 months, the



prosecution has not been able to examine even a single prosecution witness out of total 34 witnesses cited by the prosecution and delay in the conclusion of trial cannot be attributed to the petitioner as he is in judicial custody and all the prosecution witnesses are police officials and delay in conclusion of trial suffocates the right of the petitioner granted under Article 21 of Constitution of India.

4. Per contra, the learned State counsel files the custody certificate, which is taken on record and opposes the prayer made by learned counsel for the petitioner on the ground that the petitioner is a habitual offender and involved in total 05 cases under the NDPS Act, out of which he is undertrial in 03 cases and convicted in two cases and a huge quantity of 175 kgs of *Dodapost* (poppy husk) has been recovered from his conscious possession. However, he could not controvert the fact that petitioner has undergone a total custody of 01 years 06 months and 18 days and not even a single prosecution witness has been examined till date.

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 23.07.2023. The final report under Section 173 Cr.P.C. was presented before the concerned Court and subsequently, charges were framed. Currently, the trial is at the stage of prosecution witness and out of 34 PWs, not even a single prosecution witness has been examined till date. The petitioner has already undergone 01 year 06 months and 18 days of custody and the delay in conclusion of trial cannot be attributed to him. A two Judge bench of the Hon'ble Supreme Court in ***Nandlal Mondal @ Abhay Mondal Vs. The State of West Bengal SLP (Crl.) No(s).12788/2023*** released the accused on bail after completion of 18 months of custody on account of protracted trial in NDPS case



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placed upon the judgments rendered by the Hon'ble Supreme Court passed in *Md. Aliul Islam @ Aliul Islam @ Alius Vs. The State of West Bengal SLP (Crl.) No. 000736/2024*, *Debrata Mondal Vs. State of West Bengal SLP(Crl.) No. 14970-2023*, *Santarul Islam @ Santa Vs. The State of West Bengal SLP(Crl.) No. 13169/2023*, *Indrajit Mondal @ Piglu Vs. The State of West Bengal SLP(Crl.) No. 8512/2023*, *Narjul Islam @ Najbul Hoque Vs. The State of West Bengal SLP(Crl.) No. 14172/2023*, *Subhashri Das @ Rana @ Subhoshree Vs. The State of West Bengal SLP(Crl.) No. 15284/2023*, *Mithun Sk. & Anr. Vs. The State of West Bengal SLP (Crl.) No.016598/2023*, *SK. Nasiruddin @ Nasirddin SK. Vs. State of West Bengal SLP (Crl.) No.003402/2024*, *Indadul Shah Vs. The State of West Bengal SLP(Crl.) No. 12670/2023*, *Hanef Kharsani @ Hanef Sheikh Vs. Union of India, Ripon Seikh & Ors. Vs. State of West Bengal SLP(Crl.) No. 16663/2023*, *Moidul Sarkar Vs. The State of West Bengal SLP(Crl.) No. 15668/ 2023*, *Saniya Bibi @ Soniya Bibi Vs. The State of West Bengal SLP(Crl.) No. 2354/2024*, *Saddam Hossain Vs. State of West Bengal SLP(Crl.) No. 15496/2023*, *Bijon SK @ Golam Murselim Vs. The State of West Bengal SLP (Crl.) No. 6046/2024* and *Subhas Vs. The State of West Bengal SLP(Crl.) No. 8823/2019*.

6. Further, the culpability, if any, would be determined at the time of final disposal of the case and as such, no useful purpose will be served by further detention of the petitioner-accused. Keeping the petitioner in further detention without the prospect of conclusion of trial in the near future, would be violative of his rights under Article 21 of the Constitution of India. A two Judge bench of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain vs. State (NCT of Delhi) 2023 AIR SC 1648* has held that the concept of fairness



granting bail in cases involving commercial quantity of contraband, as stipulated by Section 37 of the NDPS Act. Speaking through Justice S. Ravindra Bhat, has opined as follows:

“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. Rattan Malik). 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.

21. Before parting, 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. Jails are overcrowded and their living conditions, more often than not, appalling.” (emphasis added)

7. In view of the ratio of law laid down by Hon’ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR (Criminal) 831 and **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others** 2012(2) SCC 382, the involvement of accused in other criminal cases cannot be the sole ground to deny him the concession of bail.

8. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner-Ashok Kumar @ Shoki is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.



9. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

13.02.2025
Ajay Goswami

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