



CRM-M-58377-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(201)

CRM-M-58377-2024
Date of Decision : 08.01.2025

Manish @ Manu ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sukhdev Singh, Advocate for
Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. This is the third bail petition, preferred by the petitioner, under Section 439 of Cr.P.C., wherein, the petitioner prays for grant of relief of regular bail in case FIR No.0016 dated 30.04.2023 (Annexure P-3), under Sections 15/61-85 of the NDPS Act, 1985, registered at Police Station City Kurali, District SAS Nagar.
2. The previous bail applications were dismissed as withdrawn, at that stage, vide orders dated 04.03.2024 and 04.07.2024, respectively. The instant petition has been filed on the ground that there was no substantial progress in the trial, after dismissal of the second bail application.
3. On asking for the relief (supra), learned counsel for the petitioner submits, that as on today, only one prosecution witness has been examined, out of total 13 witnesses, as cited by the prosecution, in the final report. He further submits that the petitioner has suffered incarceration of more than 01 year and 08 months, as on today. Finally, he submits that the



petitioner is not involved in one other case under the NDPS Act, nor he has been previously convicted, in any case, and has clean antecedents, except one criminal complaint registered under Section 138 of the Negotiable Instruments Act, 1881, in which, he is on bail.

4. In the instant case, the petitioner was apprehended with 100 kg poppy husk from the car, make Aura Hyundai, colour white, which undisputedly falls under the ambit of commercial quantity, as per the schedule attached with the NDPS Act. The relevant extract of the FIR, reads as under :-

“First Information contents (Attach separate sheet, if necessary): Copy of Rukka "Incharge Police Station City Kurali " Today including Amritpal Singh 593/S.A.S. Nagar, constable Vikram 1909/S.A.S. Nagar, C 2 Karanveer Singh No 2278/S.A.S. Nagar, on official vehicle number PB-65-AH-3661 whose driver C2 Singh Satnam Singh No: 2154/S.A.S. In connection with the patrolling of the city including the laptop printer, they were checking the vehicles coming from the Chandigarh side on Kurali bypass near Padyala in relation to suspected men and vehicles. The vehicle number HP-16A-2751 brand Era Hyundai color white with two elderly persons on board came from Chandigarh side, which was stopped for checking with the help of fellow officers, but the back seat of the vehicle was found to contain 2 heavy duty plastic bags. After opening the plastic bags and checked by Amritpal Singh and it was found that the plastic bag contained poppy husk. On checking by C2 Karanveer Singh of the said vehicle, 2 more packed plastic bags were also found in it, after that the officers asked the name of the owner of the vehicle, then the driver gave his name as Sultan Ali alias Rishab son of Muhammad Hasan son of Ali Khan village Miyong, police



station Rajgarh, age 27 years and the person sitting next to him gave his name Manish alias Manu son of Padam Dev son of Roshan Lal resident of village Ratauli, police station Rajgarh district Sirmour Himachal Pradesh aged 34 years. After that the notice under section 50 of ndps act was given to them and information give to conducted the checking of Both the young men and they said that we had only these 4 bags of poppy husk. Apart from this, there is no other drug/poppy husk in our vehicle. You can search us and our vehicle yourself. Whose personal statement was approved and signed separately and witnesses also signed the documents and found to be correct. On the spot Chance we tried to investigate including a private witness, but everyone kept on walking, citing their own compulsion. Then, found 4 bags of poppy seeds from Sultan Ali alias Rishab and Manish alias Manu from their vehicle, the total weight of which was 1 quintal, each bag contained 25/25 kg. then serial number 1 to 4 was affixed to bags and after preparing the said 4 bags of poppy husk and stamped all of them with one/one stamp of his stamp letter HS and prepared sample stamp separately. Done, handed over to Mr. Amritpal Singh for use after stamp. Serial No. 1 to 4 bags of poppies weight 25/25 kg total one quintal of poppies and the vehicle was also taken into custody by the police through recovery memo, memo was correct testimony was given. Sultan Ali alias Rishab and Manish alias Manu have committed the offense u/s 15-61-85 NDPS Act by keeping poppy husk in their possession. send the case and it should be registered and made aware of the number file. Control room and officers should be informed. Special reports to be issued. While checking with fellow officers at Bypass Kurali near village Padyala. At 10:30 PM.SD/- Harbhej Singh a FIR was registered against Sultan Ali alias Rishab son of Muhammad Hasan son of Ali Khan village Meyong Police



Station Rajgarh and Manish alias Mannu son of Padam Dev son of Roshan Lal resident of Village Ratauli Police Station Rajgarh District Sirmour Himachal Pradesh. Copy of FIR send to District Magistrate and Another special report is being sent to S. Lakhmir Singh 359 in the service of higher authorities. Separate notification is being given to CR Mohali. Original document along with copy FIR is sent to C2 Satnam Singh No. 2154/SAS. Investigating Officer ASI Harbhaj Singh is being posted to CIA Staff District SAS Nagar. Munsu police station was instructed to complete the record.”

The petitioner and the co-accused Sultan Ali @ Rishab, were arrested from the spot. The FSL report confirms the presence of husk of Papaver Somniferum L Plant in the contents of the parcels, sent for forensic examination.

5. The thrust of the learned counsel for the petitioner is only on the basis of long incarceration and the fact that the petitioner is not involved in any other case under the NDPS Act. Further, the learned counsel for the petitioner had addressed the arguments on merits of the instant case, to the effect, that some of the mandatory provisions of the NDPS Act, has not been complied with. However, this Court, refrains itself from making any observation on such submissions.

6. In deference to the directions issued by the coordinate Bench of this Court, by drawing an order dated 27.11.2024, status report dated 07.01.2025, by way of affidavit of Mr. Mohit Kumar Agarwal, PPS, Deputy Superintendent of Police, Sub Division Kharar-II, District SAS Nagar (Mohali), on behalf of the respondent-State of Punjab, furnished by the learned State counsel today in the Court. The same is taken on the record.



7. Learned State counsel, on instructions imparted to him by ASI Avtar Singh, opposed the grant of concession of regular bail to the petitioner, on the ground, that the recovery effected in the instant case, falls under the ambit of commercial quantity, and therefore, the rigor of Section 37 of the NDPS Act, comes into operation.

8. Learned State counsel has also placed on record the custody certificate dated 08.01.2025, qua the petitioner, today in the Court. The same is taken on record. He further on instructions submits that challan stands presented on dated 24.08.2023, and charges were framed on dated 20.11.2023.

9. It is not in dispute that only one prosecution witness has been examined, out of total 10 witnesses, and two witness have been given up being unnecessary, as cited by the prosecution in the final report, whereas, the petitioner has suffered incarceration of 01 year, 08 months and 053 days, as on today. So far as, the rigor of Section 37 of the NDPS Act, is concerned, this Court, in a number of judgments has already observed that long incarceration would dilute the rigor of Section 37 of the NDPS Act.

10. This Court finds vigor from the judgment of the Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023***, wherein, the Court has also discussed the effect of Section 37 of the NDPS Act, in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of



opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

11. This Court has heard the rival submission of the parties concerned, and is of the view that the instant petition is amenable to be allowed; considering the period of incarceration suffered by the petitioner, stage of the trial; and specifically the fact that except the instant FIR, the petitioner is not involved in any other case, under the NDPS Act, except one criminal complaint registered under Section 138 of the Negotiable Instruments Act, 1881, in which, he is on bail.

12. Keeping in view the facts and circumstances of the case, further incarceration of the petitioner is not warranted at all, at this stage. Accordingly, the instant petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

13. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

January 08, 2025

Manpreet

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No