

Law Today Live Doc. Id. 15720

PUNJAB AND HARYANA HIGH COURT**Before: Avneesh Jhingan, J.**

CRM-M-17590 of 2020

Decided on: 14.12.2020

Jai Parkash Sahni

Petitioner

Versus

State of Punjab

Respondent

Present:

Mr. Ashok Giri, Advocate for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), Sections 18/61, 37 – Code of Criminal Procedure, 1973 (2 of 1974), Section 439 -- NDPS case – Commercial quantity – Regular bail -- Petitioner was carrying a black bag on his shoulder – Petitioner and co-accused arrested carrying 3 kilograms each of Opium – Petitioner cannot be denied bail merely on the ground that he belong to Bihar -- Moreover by offering the surety amount to the extent of Rs.5,00,000/-, the apprehension of the petitioner absconding is met to an extent – Petitioner is behind bars for more than 1 ½ years -- Conclusion of trial is likely to take time -- Petitioner is not involved in any other case -- Story put forth by the prosecution gives an arguable issue to the petitioner -- Nothing on record to show that the concession of bail is likely to be misutilised -- Petitioner granted bail subject to furnishing surety/sureties to the tune of Rs.5,00,000/- to the satisfaction of the trial Court.

(Para 4-11)**Cases referred:**

1. Dalip Singh @ Deepa Versus State of Punjab, 2010(2) RCR (Criminal) 566.
2. Satpal Singh Versus State of Punjab, 2018 AIR (SC) 2011.
3. Union of India Versus Niyazuddin Sk. And another 2017 AIR (SC) 3932.

AVNEESH JHINGAN, J. (ORAL) –

1. The matter is taken up for hearing through video conference due to COVID-19 situation.

2. This is a petition seeking regular bail in FIR No. 49 dated 11.4.2019 under Sections 18/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short the NDPS Act) registered at Police Station Lalru, District SAS Nagar, Mohali.

3. As per the FIR, one Haryana Roadways Bus was checked on 11.4.2019 at about 7:15 p.m. The petitioner was carrying a black bag on his shoulder, on seeing the police he tried to run through the back door of the bus but was apprehended. The co-accused Madhu Kumar Saini was also apprehended. Both the accused were carrying 3 kilograms each of Opium.

Recovery was made and they were arrested.

4. Learned counsel for the petitioner submits that the petitioner is behind the bars for 1 year 8 months and there is no other case pending. The submission is that the Opium was weighed along with bag (thaila). The contention that the recovery is marginally above the commercial quantity. It is submitted that the challan has been presented, trial is not proceeding. There is no other case pending against the petitioner.

5. Learned State counsel submits that the recovery is of commercial quantity. The petitioner is a resident of Bihar and if enlarged on bail there is every apprehension of his absconding. She relies upon Section 37 of the NDPS Act to oppose the bail.

6. Learned counsel for the petitioner submits that in order to meet apprehension of State, the petitioner is ready to furnish surety/sureties to the extent of Rs.5,00,000/-. He further relies upon Full Bench of this Court in **Dalip Singh @ Deepa Versus State of Punjab, 2010(2) RCR (Criminal) 566**.

7. The alleged recovery from the accused is 3 kilograms opium, it is alleged that the bag (thaila) was weighed along with the content. The State counsel has not been able to point out that there is any other case pending against the petitioner. The petitioner cannot be denied bail merely on the ground that he belong to Bihar. Moreover by offering the surety amount to the extent of Rs.5,00,000/-, the apprehension of the petitioner absconding is met to an extent. The petitioner is behind bars for more than 1 ½ years. The conclusion of trial is likely to take time.

8. The reliance of the State counsel on Section 37 of the Act, does not enhance the case of the State for non grant of bail. The Supreme Court in **Satpal Singh Versus State of Punjab, 2018 AIR (SC) 2011**, held as under:-

"4. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C or any other law in force on the grant of bail. In view of the seriousness of the offence, the lawmakers have consciously put such stringent restrictions on the discretion available to the court while considering application for release of a person on bail. It is unfortunate that the provision has not been noticed by the High Court. And it is more unfortunate that the same has not been brought to the notice of the Court."

9. In **Union of India Versus Niyazuddin Sk. And another 2017 AIR (SC) 3932**, it was held as under:-

"The accusation in the present case is with regard to the fourth factor namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the

enumerated offences under section 37 of the NDPS Act, in case, the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment. (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such offence; (2) that person is not likely to commit any offence while on bail."

10. In the present case the petitioner is not involved in any other case. The allegation with regard to weighment of the recovery are enough atleast at this stage to be considered beneficially for the petitioner. The story put forth by the prosecution gives an arguable issue to the petitioner. There is nothing on record to show that the concession of bail is likely to be misutilised.

11. Considering the facts and circumstances in entirety, the petitioner is granted bail subject to furnishing surety/sureties to the tune of Rs.5,00,000/- to the satisfaction of the trial Court.

Order accordingly.
