Bobby Sharma Vs State Of Himachal Pradesh

Criminal Miscellaneous Petition (Main) No. 112 Of 2023

Court: High Court Of Himachal Pradesh

Date of Decision: April 5, 2023

Acts Referred:
Narcotic Drugs And Psychotropic Substances Act, 1985 â€" Section 8, 20, 27AA, 28, 29, 37

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Manoj Pathak, Varun Chandel, Mohinder Zharaick, Arsh Rattan

Final Decision: Allowed

Judgement

Satyen Vaidya, J

1. Petitioner is an accused in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of Narcotic Drugs and Psychotropic

Substances, Act (for short Ã¢â‚¬ËœND&PSÃ¢â‚¬â„¢ Act), at Police Station Swarghat, District Bilaspur, H.P. Petitioner is in custody since 24.02.2021.

2. Petitioner is facing trial for offences under Sections 20 and 29 of ND&PS Act in pursuance to challan filed by respondent. The case of the

prosecution is that on 24.02.2021, police intercepted Car No. HP49-2697, at place Baner within the jurisdiction of Police Station Swarghat, District

Bilaspur, H.P. Accused Tek Ram was on the wheel and petitioner was an occupant of front passenger seat. On search of the Car, 1.790 Kgs Charas

was recovered from the vehicle. The case was registered and petitioner alongwith co-accused Tek Ram were arrested. It was discovered that

petitioner and Tek Ram were transporting the contraband at the instance of other co-accused, namely Vikas @ Vicky, Hitesh and Manoj Hooda.

Petitioner and Tek Ram were engaged to transport the contraband from District Kullu, H.P. till the boundary of State of Himachal Pradesh. It was

also discovered that the other co-accused were waiting on the State border of Himachal Pradesh beyond Swarghat in District Bilaspur, H.P. Police

acted with promptness and arrested co-accused Vikas @ Vicky and Hitesh, who were found waiting near State border in a vehicle No. DL8C-NA-

7974.

3. Petitioner has now prayed for grant of bail on the ground that his constitutional right of expeditious disposal of trial has been infringed. As per

petitioner, he is in custody for more than two years and the trial has not concluded, rather, it is progressing at snailÃ¢â‚¬â„¢s pace.

4. As per petitioner, out of twenty-five cited witnesses, prosecution has examined only four witnesses till date and four witnesses have been given up.

5. Learned Additional Advocate General has opposed the prayer of the petitioner, on the ground that Section 37 of ND&PS Act, has application in the

facts of the case and merely, on the ground of delay in conclusion of trial, petitioner cannot be released on bail.

6. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the status report.

7. The fetters placed by Section 37 of ND&PS Act, evidently have been instrumental in denial of right of bail to the petitioner in the instant case till

date. The question that arises for consideration is, can the provision of Section 37 of the Act, be construed to have same efficacy throughout the

pendency of trial, notwithstanding, the period of custody of the accused, especially, when it is weighed against his fundamental right to have

expeditious disposal of trial.

8. As is suggested by the contents of status report, recording of prosecution evidence is still in progress despite the fact that petitioner is in custody

since 24.02.2021. In the considered view of this Court, the Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of

Section 37 of ND&Ps Act in perpetuity.

9. Recently, in a number of cases, under-trials for offences involving commercial quantity of contraband under ND&PS Act have been allowed the

liberty of bail by HonÃ¢â‚¬â„¢ble Supreme Court only on the ground that they have been incarcerated for prolonged durations.

10. In Mahmood Kurdeya Vs. Narcotic Control Bureau (2022) 3 RCR (Criminal) 906, HonÃ¢â‚¬â„¢ble Supreme Court has held as under:-

Ã¢â‚¬Å“6.What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in the present case

though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced.Ã¢â‚¬â€‹

11. In Nitish Adhikary @ Bapan Vs.The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022, decided on 01.08.2022,

HonÃ¢â‚¬â„¢ble Supreme Court has held as under:-

Ã¢â‚¬Å“During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on

09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents. Taking

into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the

merits of the case, we are inclined to grant bail to the petitioner.Ã¢â‚¬â€‹

12. In Gopal Krishna Patra @ Gopalrusma Vs. Union of India (Cr. Appeal No. 1169 of 2022), decided on 05.08.2022, HonÃ¢â‚¬â„¢ble Supreme Court

has held as under:-

Ã¢â‚¬Å“ The appellant is in custody since 18.06.2020 in connection with crime registered as NCB Crime No. 02/2020 in respect of offences punishable

under Sections 8,20,27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1098.

The application seeking relief of bail having been rejected, the instant appeal has been fled.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General

for the respondent.

Considering the fact and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out.Ã¢â‚¬â€‹

13. In Chitta Biswas @ Subhas Vs. The State of West Bengal, (Criminal Appeal No.(s) 245 of 2020, decided on 07.02.2020, it has been held as

under:-

Ã, Ã¢â‚¬Å“The appellant was arrested on 21.07.2018 and continues to be custody. It appears that out of 10 witnesses cited to be examined in support of

the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submission and considering the facts and circumstances on record, in our view,

case for bail is made out.Ã¢â‚¬â€‹

14. In Abdul Majeed Lone Vs. Union Territory of Jammu and Kashmir(Special Leave to Appeal (Cr.L.) No. 3961 of 2022, decided on 01.08.2022, it

has been held as under:-

Ã¢â‚¬Å“Having regard to the fact that the petitioner is reported to be in jail since 1-3-2020 and has suffered incarceration for over 2 years and 5 months

and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the UT,

we are inclined to enlarge the petitioner on bail.Ã¢â‚¬â€‹.

15. In addition, different Co-ordinate Benches of this Court have also followed precedent to grant bail to the accused in ND&PS Act, on the ground of

prolonged pre-trial incarceration. Reference can be made to order dated 28.07.2022, passed in Cr.MP(M) No. 1255 of 2022, order dated 1. 12.2022,

passed in Cr.MP(M) No. 2271 of 2022 and order dated 04.11.2022, passed in Cr.MP(M) No. 2273 of 2022.

16. Recently in Criminal Appeal No. 943 of 2023 titled as Mohd Muslim @ Hussain Vs. State (NCT of Delhi), HonÃ¢â‚¬â„¢ble Supreme Court, vide its

judgment dated 28.03.2023, has held as under:-

Ã¢â‚¬Å“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. According to the Union Home MinistryÃ¢â‚¬â„¢s response to Parliament, the National Crime Records Bureau

had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country20. Of

these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of Ã¢â‚¬Å“prisonisationÃ¢â‚¬ a term described by the Kerala High Court in A Convict

Prisoner v. State21 asÃ¢â‚¬Å“a radical transformationÃ¢â‚¬ whereby the prisoner: Ã¢â‚¬Å“loses his identity. He is known by a number. He loses personal

possessions.

He has no personal relationships.

Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out

to be dreadful.

The prisoner becomes hostile by ordinary standards. Self-perception changes.Ã¢â‚¬â€‹

23. There is a further danger of the prisoner turning to crime, Ã¢â‚¬Å“as crime not only turns admirable, but the more professional the crime, more honour

is paid to the criminalÃ¢â‚¬22 (also see Donald ClemmerÃ¢â‚¬â„¢s Ã¢â‚¬ËœThe Prison CommunityÃ¢â‚¬â„¢ 20 National Crime Records Bureau, Prison Statistics in

India https://ncrb.gov.in/sites/default/files/ PSI- 2021/Executive ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers - Group on Prisons

& Borstals - 1966 U.K. published in 194023). Incarceration has further deleterious effects - where the accused belongs to the weakest economic

strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts

therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials Ã¢â‚¬

especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.Ã¢â‚¬â€‹

17. Reverting to the facts of the case, the petitioner is in custody since 24.02.2021 and the facts suggest that the trial is not likely to be concluded in

near future. There is nothing on record to suggest that delay in trial is attributable to the petitioner.

18. Keeping in view the facts of the case and also the above noted precedents, the bail petition is allowed and petitioner is ordered to be released on

bail in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of ND&PS Act, at Police Station Swarghat, District Bilaspur,

H.P. on his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial court. This order

shall, however, be subject to the following conditions:-

i) Petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

ii) Petitioner shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in

relation to the facts of the case in hand.

iii) Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.

(iv) Petitioner shall not leave India without permission of learned trial Court till completion of trial.

19. Any expression of opinion herein - above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of

this petition.