

*Before Suvir Sehgal, J.*

**RAKESH PURI @ BULLI—Petitioner**

*versus*

**STATE OF HARYANA—Respondent**

**CRM-M No. 27566 of 2020**

September 18, 2020

*The Code of Criminal Procedure, 1973—S.439—Narcotic Drug and Psychotropic Substances Act, 1985—S. 21-B & 31—First petition for regular bail withdrawn—Second petition instituted 1 month thereafter without there being any new development or variation in the fact situation—Dismissed—Held, without there being any change in the circumstances second petition would be deemed to be seeking review of the earlier judgment which is not permissible in criminal law.*

*Held*, that out of six cases, including the present case, four cases pending against the petitioner are under the provisions of NDPS Act, besides one conviction. It is clear that the petitioner has a criminal disposition. It is not in the interest of the society to release such a person on bail.

(Para 9)

*Further held*, that the first petition for regular bail i.e. CRM-M-19259-2020 filed by the petitioner was withdrawn on 06.08.2020 after arguing. The present second petition has been filed without there being any new development or variation in the fact situation.

(Para 10)

*Further held*, that without there being any change in the circumstances, the second petition would be deemed to be seeking review of the earlier judgment which is not permissible in criminal law

(Para11)

Satnam Singh Gill, Advocate, *for the petitioner.*

Rajiv Sidhu, DAG, Haryana, *for the respondent-State.*

**SUVIR SEHGAL J. (ORAL)**

(1) The hearing of this case has been taken up through video conferencing on account of Covid-19 Pandemic.

(2) This is a second petition under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 184 dated 03.05.2020 registered under Sections 188 of Indian Penal Code, 1860, Section 51-B of Disaster Management Act, 2005 and Section 21-B/31 of Narcotic Drug and Psychotropic Substances Act, 1985 (for short "NDPS Act") at Police Station City Tohana, District Fatehabad. The first petition for regular bail was withdrawn by the counsel for the petitioner on 06.08.2020, Annexure P-1. The present petition has been instituted barely one month thereafter.

(3) As per the version of the prosecution, the petitioner was driving a motorcycle and co-accused Vipin Kumar was sitting on the pillion when they were intercepted by the police party on 03.05.2020. Upon conducting search, 80 grams of heroin was recovered from the right pocket of the jeans of co-accused, Vipin Kumar. The petitioner and co-accused were arrested.

(4) Counsel for the petitioner has argued that no recovery was effected from the petitioner and he is totally innocent. According to the counsel, the recovery of the contraband from the co-accused, Vipin Kumar, has been deliberately fastened on the petitioner on the basis of the disclosure statement of the co-accused even though, it is not admissible in evidence. His further contention is that the co-accused was granted the concession of regular bail by the learned Additional Sessions Judge, Fatehabad, vide order dated 19.06.2020, Annexure P-2 and the case of the petitioner is on a better footing. He submits that the second petition for regular bail is maintainable as the first was "dismissed as withdrawn" since the FSL report had not been received.

(5) Per contra, learned counsel for the State, upon instructions from Inspector Ram Singh has opposed the petition on the ground that the petitioner has numerous cases registered against him. He further submits that the co-accused, Vipin Kumar had specifically stated that out of the 80 grams of heroin, which was recovered from him and had been brought from Delhi, 50 grams belonged to the petitioner, who had paid for it.

(6) I have considered the rival submissions of the counsels.

(7) On a pointed query to the counsel for the petitioner as to when the FSL report was received, he could not give any specific date. Still further, the counsel on being asked could not explain his involvement in five other cases.

(8) The details of the cases which are pending against the

petitioner are reproduced hereunder:-

(i) FIR No.166 dated 11.04.2017, under Section 13A, Public Gambling Act, P.S. City Tohana, Distt. Fatehabad, (ii) FIR No.342 dated 06.08.2018, under Section 21A, NDPS Act, P.S. City Tohana, Distt. Fatehabad, (iii) FIR No.558 dated 29.11.2016, under Section 13A, Public Gambling Act, P.S. City Tohana, Distt. Fatehabad, (iv) FIR No.18 dated 28.02.2009, under Section 18, NDPS Act, P.S. Moonak, Distt. Sangrur; and (v) FIR No.451 dated 18.09.2019, under Section 21B, NDPS Act, P.S. City Tohana, Distt. Fatehabad.

(9) From the above, it is apparent that out of six cases, including the present case, four cases pending against the petitioner are under the provisions of NDPS Act besides one conviction. It is clear that the petitioner has a criminal disposition. It is not in the interest of the society to release such a person on bail.

(10) The first petition for regular bail i.e. CRM-M-19259-2020 filed by the petitioner was withdrawn on 06.08.2020 after arguing. The present second petition has been filed without there being any new development or variation in the fact situation.

(11) Without there being any change in the circumstances, the second petition would be deemed to be seeking review of the earlier judgment which is not permissible in criminal law as has been held by the Hon'ble Supreme Court in *Hari Singh Maan versus Harbhajan Singh Bajwa*<sup>1</sup>; *State of Madhya Pradesh versus Kajad*<sup>2</sup> and *State of Maharashtra versus Captain Budhhi Kota Subha Rao*<sup>3</sup>.

(12) Accordingly, this second petition for bail pending trial of the petitioner-accused, is dismissed.

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*J.S. Mehndiratta*

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<sup>1</sup> 2001 (1) SCC 169

<sup>2</sup> 2001 SCC (Cr.)1520

<sup>3</sup> 1989 Suppl. (2) SCC 605