

CRM-M-9492-2021

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(207)

CRM-M-9492-2021.
Date of Decision:-05.10.2021.

Vipul Goyal

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (Oral)

This is the second petition under Section 439 Cr.PC. for grant of regular bail to the petitioner in case FIR No.656 dated 05.10.2019 under Section 22 of the NDPS Act, registered at Police Station City Sirsa, District Sirsa.

Learned counsel for the petitioner has submitted that in the present case, the petitioner is a registered Pharmacist and has licence to sell stock or exhibit (or offer for sale, or distribute drugs by retail other than those specified in (Schedules C, C(1) & X). For the said purpose, reference has been made to Annexures P-3 and P-4, which are Form 20 and Form 21 issued in favour of the Kailash Pharma, of which the petitioner is stated to be the sole proprietor. It has been highlighted that the date of the said licence is 14.06.2019 and the said licence is in operation and has not been

CRM-M-9492-2021

cancelled. It is, thus, submitted that on the date when the alleged recovery had taken place i.e. 05.10.2019, the petitioner, in fact, had a licence to keep the tablets in question. It is further submitted that the petitioner has been in custody since 05.10.2019 and except for the period of 04 weeks for which he was granted interim bail, the petitioner has been in custody and, thus, the period of almost 01 year and 11 months has elapsed since the petitioner has been in custody. It is also argued that the petitioner is not involved in any other case and it has been perversely observed in the order dated 16.02.2021 passed by the Additional Sessions Judge, Sirsa, that there are 03 more cases against the petitioner. It is submitted that the earlier bail application of the petitioner was dismissed as withdrawn on 26.10.2020 and a period of more than 11 months has elapsed since then and in the present case, the challan has been presented and there are 14 prosecution witnesses out of which only 02 have been examined and, thus, the trial is likely to take time and thus, it is prayed that the petitioner deserves the concession of regular bail.

Learned counsel for the petitioner, in order to overcome the bar under Section 37 of the NDPS Act, has relied upon several judgments. The said judgments have been collated hereinbelow:

- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina v. Union of India.**
- Judgment of a Co-ordinate Bench titled as **Ankush Kumar @ Sonu v. State of Punjab** reported as 2018 (4) RCR (Criminal) 84; which was further challenged in the Hon'ble Supreme Court vide SLP (Criminal) Diary No.42609 of 2018 and the same was upheld.

CRM-M-9492-2021

- Judgment of a Co-ordinate Bench in CRM-M-20177-2020 titled as *Narcotic Control Bureau v. Vipansood and another* and the same was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021.
- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.668 of 2020 titled as *"Amit Singh @ Moni v. Himachal Pradesh."*
- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.827 of 2021 titled as *Mukarram Hussain v. State of Rajasthan and another.*
- Judgment of a Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as *"Ajay Kumar @Nannu v. State of Punjab"*.

Further, reliance has also been placed upon the judgment of a Division Bench of this Court in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, *Harpal Singh v. National Investigating Agency and another*, dated 31.08.2021, wherein the Division Bench was pleased to grant suspension of sentence in a case where the recovery was of commercial quantity. It has been argued that in the said Division Bench judgment, it had been noticed that the grounds for regular bail stand on better footing than for suspension of sentence, which is after conviction.

Per contra, learned State counsel, on instructions from ASI Balwan, has submitted that in the present case, the recovery which has been effected is of tablets which would constitute 290 grams of Alprazolam and the same would, thus, come within the meaning of commercial quantity and has, therefore, opposed the bail application. However, the learned State

CRM-M-9492-2021

counsel could not dispute the other factual aspects, moreso, with respect to the fact that the petitioner is not involved in any other case and the fact that the petitioner has been in custody since 05.10.2019 and also with respect to the petitioner having the valid licence (Annexures P-3 and P-4).

This Court has heard and considered the arguments advanced by the learned counsel for the parties.

In the present case, as is apparent from the record, the petitioner being a registered Pharmacist has a licence issued to the firm i.e., Kailash Pharma for licence to sell, stock or exhibit (or offer for sale, or distribute drugs by retail other than those specified in (Schedules C, C(1) & X), of which the petitioner is the sole proprietor. The said licence is dated 14.06.2019 and was valid on the date when the alleged recovery had been made i.e., on 05.10.2019. The said aspect would be a crucial aspect to be considered at the time of trial and, thus, the petitioner has a valid point in his favour. The petitioner has been in custody since 05.10.2019 and other than 04 weeks of interim bail that was granted, the petitioner has been custody till date, which would be for 01 year 11 months approximately. It is however clear that the petitioner is not involved in any other case and there are 14 prosecution witnesses, out of which only 02 have been examined and, thus, the trial is likely to take time, moreso, in view of the present COVID-19 pandemic. The earlier bail application of the petitioner was withdrawn on 26.10.2021¹¹ and a period of 11 months has elapsed since then.

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved,

CRM-M-9492-2021

there the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, granted bail/suspension of sentence. Some of the said judgments are being discussed hereinafter. In Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina v. Union of India**, the Hon'ble Supreme Court in a case where allegation in the chargesheet was with respect to 120 kg of contraband i.e. "ganja", thus, being of commercial quantity, was pleased to grant bail after setting aside the order of the High Court where the said application for grant of regular bail had been rejected.

A co-ordinate Bench of this Court in a detailed judgment titled as **Ankush Kumar @ Sonu v. State of Punjab** reported as 2018 (4) RCR (Criminal) 84, had considered the provision of Section 37 of the NDPS Act in extenso and had granted bail in a case which involved commercial quantity. The relevant portion of the said judgment is reproduced as under:

“ xxx--xxx--xxx

But, so far as second part of Section 37 (1) (b) (ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of the petitioner as to what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any

CRM-M-9492-2021

offence' or 'offence under NDPS Act' after being released on bail, then this court, also, does not have any reasonable ground to be satisfied that the petitioner is likely to commit any offence after he is released on bail. Hence, this satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner.”

The Special Leave Petition (Criminal) Diary No.42609 of 2018 filed against the aforesaid judgment of the Co-ordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

Further, vide order dated 25.02.2021 in CRM-M-20177-2020, a Co-ordinate Bench of this Court granted regular bail to an accused who was involved in a case wherein recovery was of 3.8 kgs of “charas” (commercial quantity) after being in custody for 1 year and 7 months. The said order was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021 titled as **“Narcotic Control Bureau v. Vipin Sood and another”**.

The Hon'ble Supreme Court of India vide order dated 12.10.2020 passed in Criminal Appeal No.668 of 2020 titled as **“Amit Singh @ Moni v. Himachal Pradesh”** was pleased to grant regular bail in a case involving 3 kgs and 800 grams of “charas” primarily on the ground of substantial custody and also, the fact that the trial would likely take time to conclude.

In Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and another**, the Hon'ble Apex Court vide judgment dated 16.8.2021 was also pleased to grant bail wherein the quantity of the contraband was commercial in nature.

CRM-M-9492-2021

A Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as **Ajay Kumar @Nannu v. State of Punjab** and other connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, was pleased to grant regular bail in a case involving commercial quantity and a condition was imposed on the petitioner therein while granting the said bail and the said condition was incorporated in para 21 of the said judgment, which reads as under:

“21. However, the petitioners are granted regular bail subject to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.”

Further, a Division Bench of this Court vide judgment dated 31.08.2021 passed in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, **Harpal Singh v. National Investigating Agency and another**, granted suspension of sentence in a case where the recovery was of commercial quantity. In the abovementioned order, the Division Bench had taken into consideration the right vested with an accused person/convict under Article 21 of the Constitution of India with regard to speedy trial. Further, the judgment of Hon'ble the Supreme Court in **State (NCT of Delhi) v. Lokesh Chadha**; (2021) 5 SCC 724 was also taken into account and the provisions of Section 37 of NDPS Act were considered and the sentence of the applicant-appellant therein was suspended after primarily considering the period of custody of the applicant-appellant therein and also the fact that the appeal was not likely to be heard in near future. Reference in the order

CRM-M-9492-2021

was also made to the Division Bench judgment of this Court in **Daler Singhv. State of Punjab**; 2007 (1) R.C.R. (Criminal) 316 and the view taken in Daler Singh's case (supra) was reiterated and followed. In the above said judgment, it was also noticed that the grounds for regular bail stand on a better footing than that of suspension of sentence which is after conviction. It is apparent that to meet the requirement of Section 37 of the NDPS Act, various Courts have taken into consideration the merits of the case and the period of custody and where in a case there are arguable points on merits and the custody is also adequate, the Hon'ble Supreme as well as various High Courts have granted bail even in cases involving commercial quantity. This Court feels that in the present case, there are several arguable points which have been raised by the learned counsel for the petitioner and the petitioner has been in custody for 01 year 06 months and 07 days and the same is sufficient to entitle the petitioner for grant of regular bail. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court / Duty Magistrate, subject to his not being required in any other case. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize / intimidate the prosecution witness(s).

CRM-M-9492-2021

3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.

4. The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.

5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

October 05, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No