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

CRM-M-21092-2021 (O&M)

Date of decision : 30.11.2021

Saranjeet Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Balram Prashar, Advocate for the petitioner.

Mr. Sukhbeer Hundal, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

CRM-38313-2021

Application is allowed, as prayed for.

Judgment dated 07.03.2015 (Annexure A-4) passed by the Judge, Special Court, Ludhiana, is taken on record, subject to all just exceptions.

CRM-25117-2021

Application is allowed, as prayed for.

CD comprising CCTV footage (Annexure A-1) and judgment dated 26.03.2019 passed by this Court (Annexure A-2) are taken on record, subject to all just exceptions.

Main case

This is a petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.37 dated 05.03.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) at Police Station Machhiwara, District Khanna, Ludhiana.

On 15.07.2021, a Coordinate Bench of this Court was pleased to pass the following order:-

“CRM-19819-2021

Present application has been filed under Section 482 Cr.P.C. to place on record relevant documents i.e. Annexure A-1 to A-3.

For the reasons enumerated in the application, the same is allowed and the documents are taken on record subject to all just exceptions.

CRM-M-21092-2021

Present petition has been filed under Section 439 Cr.P.C. seeking concession of regular bail in case FIR No. 37 dated 05.03.2021, under Section 22 of NDPS Act, 1985 registered at Police Station Machhiwara, District Ludhiana.

The allegations against the petitioner are that on 05.03.2021 at about 9:50 p.m. police party was present at Kalra Chowk, Machhiwara in connection with patrolling duty. It was noticed that one lady was coming on scooty bearing No. PB-43E-5489 from the side of Machhiwara towards Main Chowk and on seeing the police party, she got nervous and tried to turn back her scooty towards left side. On suspicion she was apprehended. On search of dicky of the scooty, 140 vials of RC KUUFF-DX 60 ML, 90 strips of Tramadol Prolonged release Tablets IP and each strips containing 10 tablets (total 900 tablets) of Tramadol Hydrochloride 100 mg were recovered.

Learned counsel for the petitioner has argued that the recovery has been falsely foisted on the petitioner in fact the petitioner is a registered Pharmacist and running medical store under the name and style of M/s Master Medical Hall, Machhiwara Ludhiana for the last 21 years. He further argued that the petitioner was picked up from the outside of the said shop on 04.03.2021 at about 6:30 p.m. by CIA staff in civil clothes. The petitioner was illegally detained in the Police Station at Machhiwara. Thereafter, the son of the petitioner alongwith various respectables of the village including the Sarpanch had gone to the police station and inquired about the whereabouts of the petitioner. The police official who was present at that time told them the petitioner had been called in connection with the drug awareness drive. To substantiate the contention, learned counsel has relied upon the photographs Annexure A-1, which have been recorded by the CCTV Camera installed at a building near the Medical shop of the petitioner, which is under construction.

Adjourned to 16.08.2021.

The Senior Superintendent of Police, Ludhiana will personally look into the matter and file specific affidavit in regard to the above allegations.”

Learned counsel for the petitioner has reiterated the arguments raised on 15.07.2021 and has submitted that as per the prosecution version, the petitioner was arrested on 04.03.2021 at about 09:50 pm while she was driving the scooty as the police is stated to have become suspicious of her being in possession of some narcotic drugs/substance and after checking the dicky of the scooty, the police had found the alleged drugs/narcotic substance.

Learned counsel for the petitioner has argued that in the present case, there is complete false implication with respect to the petitioner who

has never been involved in any other case and she is a registered Pharmacist and is running a medical store under the name and style of M/s Master Medical Hall, Machhiwara Ludhiana for the last 21 years. Reference has been made to photographs (Annexure A-1), which is at page 25 of the paper book, in order to show that in fact, the petitioner was picked up from the shop on 04.03.2021 at about 06:30 p.m. by the CIA staff, who had come dressed in civil clothes. It is also argued by the learned counsel for the petitioner that the CD comprising CCTV footage with respect to the said incident has also been placed on record as Annexure A-1 alongwith CRM-25117-2021 and states that as per the said CCTV footage, each one of the CIA staff persons had gone to the shop of the petitioner and thereafter, the petitioner was picked up from the shop at 06:30 pm and was taken to the Police Station, Machhiwara.

Learned counsel for the petitioner has also referred to the judgment dated 07.03.2015 passed by the Judge, Special Court, Ludhiana (Annexure A-4 attached alongwith CRM-38313-2021), in a case registered against the husband of the petitioner namely Gurpreet Singh, where, the Judge, Special Court, Ludhiana had specifically observed that the case against the husband of the petitioner had been planted upon him on account of there being strained relationship between him and the then SHO Amardeep Singh and further direction was given to the Senior Superintendent of Police, Khanna to take appropriate action against the police officials who were involved for the said false plantation. It has been argued that MHC Jarnail Singh, in the said case, had appeared as PW3, as is apparent from para 26 of the said judgment and the said MHC Jarnail Singh

is the Investigating Officer in the present case. Relevant portion of the abovesaid judgment is reproduced hereinbelow:-

*“IN THE COURT OF SHRI SARBJIT SINGH DHALIWAL,
JUDGE, SPECIAL COURT, LUDHIANA.*

SC No. 13 dt. 3.2.2012

Case No. 35479/2013

Date of Decision: 07.03.2015

State

Versus

*Gurpreet Singh S/o Sumitar Singh aged 41 years R/o Near
Post Office, Machhiwara, Distt. Ludhiana*

.....Accused.

FIR No. 133 dated 6.11.2011

U/S 22 Narcotic Drugs and Psychotropic Substance Act.

P.S. Machhiwara, Distt. Ludhiana.

Present: Ms. Neelu Sharma, Addl.P.P. for the State.

Accused on bail with counsel Sh. R.D.

Chaudhary, Advocate.

JUDGMENT

1. SHO, P.S. Machhiwara, Distt. Ludhiana, has sent accused Gurpreet Singh to stand his trial under section 22 Narcotic Drugs and Psychotropic Substance Act(in short, to be referred as NDPS Act).

Xxx xxx

xxx xxx

26. Whereas, MHC Jarnail Singh, when appeared as PW3 in his cross-examination, in middle on first page has said, ASI Tilak Raj deposited the case property with him at 10.30 PM.

Xxx xxx

xxx xxx

27. So, from all these facts, if taken together, only

conclusion could be arrived at that a false case has been planted upon accused Gurpreet Singh, with whom the then SHO Amardeep Singh had strained relations. Therefore, there is no reason to place reliance upon statement of official witnesses, which are found to be discrepant on all the major aspects of the case. So, non joining of independent witnesses in these circumstance again creates doubt about the story of prosecution. When story of prosecution appears to be doubtful, therefore, giving benefit of doubt, accused is acquitted of the charge framed against him.

28. However, before parting with the Judgment, I am of the view that when it is not only been proved but established from the statements of prosecution witnesses that it is a false plantation of case of heavy quantity of intoxicant medicine on innocent person, so all the officials, who are involved in the investigation and recovery of present case, deserves deterrent punishment on criminal side as well as administrative side. Therefore, this judgment is ordered to be placed before the Senior Superintendent of Police, Khanna, for taking action, not only on administrative side against all the police officials, who are involved in the false plantation of case under NDPS Act but also to launch prosecution against the officials, who have created false evidence against the accused, u/s 58 of the NDPS Act, within three months from the date of receipt of copy of judgment. Further, for follow up action, office of District Attorney shall depute some Public Prosecutor, who will take up the matter with Senior Superintendent of Police, Khanna and will make sure that action is actually and really taken and from time to time, will apprise the court about further progress made in this regard by the Senior Superintendent of Police, Khanna. Copy of this judgment be sent to the office of District Attorney, Senior Superintendent of Police,

Khanna and Director General of Police, Punjab, Chandigarh and office of Ld. Sessions Judge, Ludhiana, for intimation/necessary action. File be consigned to record room.

Announced Sd/- (Sarbjit Singh Dhaliwal)
Dated: 07.03.2015 Judge, Special Court,
Ludhiana.”

Learned counsel for the petitioner has also referred to an affidavit filed by the Senior Superintendent of Police, Khanna, in compliance of order dated 15.07.2021 passed by the Coordinate Bench of this Court. Paras 8 and 9 of the said affidavit are reproduced hereinbelow:-

“8. That it is further respectfully submitted that as far as the allegations of the petitioner that she was picked up illegally from her medical store by the police officials of CIA Staff Khanna in Civil dress on 04.03.2021 at around 6.30 pm are concerned, in that regard it is submitted that the perusal of three photographs and CCTV footage received from son of the petitioner reveals presence of officials of CIA Staff Khanna in the market wherein petitioner is also seen walking. Consequently, they were joined in inquiry and their statements were recorded.

9. That it is further respectfully submitted that from the perusal of their statements, it transpired that Incharge CIA Staff Khanna has deputed ASI Machinder Singh for keeping a check on persons involved in drug peddling, snatching and other related crimes within the area of Sub Division Samrala. As a matter of consequence, on the date of occurrence, the police party headed by ASI Machinder Singh came patrolling from Samrala towards Machhiwara Sahib, for apprehending persons found selling china door on the occasion of Basant Panchvi and for checking security

arrangements for Maha Shivratri. Further, they conducted foot patrolling from Gurudwara Shri Guru Charan Kanwal Sahib, Guru Ghani Khan Navi Khan to main market, Ria Mohalla. However, they are neither familiar with petitioner nor apprehended her on the date of occurrence. The mere presence of petitioner and officials of CIA Staff, Khanna in some CCTV footage does not in any manner prove that they apprehended the petitioner from that place.”

It is submitted that a perusal of the above affidavit would show that the presence of the petitioner and the officials of CIA Staff, Khanna, together at the same place on the date of occurrence i.e. on 04.03.2021 at about 6.30 pm, has been admitted in the said affidavit. It is further submitted that no explanation has been given as to where the petitioner was being taken by the CIA staff and what happened subsequently, and thus, in these circumstances, it is apparent that the present case is a case of false implication.

Learned counsel for the petitioner has also argued that in the present case, there is non-compliance of Section 50 of the Act of 1985 inasmuch as in the present case, even the personal search of the petitioner was conducted, which fact is apparent from the memo of personal search which has been annexed alongwith the present petition, which is at page 27 of the paper book. He has relied upon the judgment passed by the Hon'ble Supreme Court in case titled **State of Rajasthan Vs. Parmanand and another**, reported as **2014(5) SCC 345**, to contend that in such a case, it is mandatory for the police officials to comply with the provisions of Section 50 of the Act of 1985. He has further referred to para 11 of the affidavit of the Senior Superintendent of Police, Khanna, in order to show that that it

has been admitted that there was no compliance of Section 50 of the Act of 1985 and the ground taken was that the compliance of Section 50 of the Act of 1985 is required only in cases wherein the personal search of accused person is conducted in furtherance of the prior secret information available with the police party. However, in the case at hand, neither there was prior information with the police party, nor the contraband was recovered from the personal search of the petitioner.

Learned counsel for the petitioner has submitted that the personal search which had been made was after the arrest of the petitioner i.e. on 05.03.2021 and thus, the said plea taken in the affidavit is legally not sustainable.

Learned counsel for the petitioner has further contended that the petitioner has been in custody since 05.03.2021 and challan in the present case has already been filed and there are as many as 13 witnesses, out of which none have been examined as yet, and thus, the conclusion of the trial is likely to take time, moreso in view of the COVID-19 pandemic and thus, prays for grant of regular bail to the petitioner.

On the other hand, learned counsel for the State has opposed the present petition for grant of regular bail to the petitioner and has submitted that as per the affidavit of Senior Superintendent of Police, Khanna, the petitioner and the officials of CIA Staff, Khanna were per chance together in the same place and the petitioner was not apprehended at that point in time. The facts that the petitioner has never been involved in any other case and that she is a registered Pharmacist, have, however not been disputed by the learned counsel for the State.

This Court has heard the learned counsel for the parties and has perused the paper book.

The present case, on the basis of record available before this Court, seems to be a case of false implication. As per the FIR, the petitioner was arrested on 04.03.2021 at about 09:50 pm by the police party while the petitioner was driving the scooty. Prima facie evidence i.e. the photographs and CCTV footage, has been produced to show that the persons who were admitted to be the CIA Staff as per the affidavit filed by the Senior Superintendent of Police, Khanna, were accompanying the petitioner in the lane in front of the shop. The same was being done at about 06.47 pm on 04.03.2021 whereas the time of arrest of the petitioner, as per the FIR, had been shown as 09:50 pm on 04.03.2021 and in the affidavit filed by the Senior Superintendent of Police, Khanna, the photographs and CCTV footage have not been disputed, nor the presence of the petitioner alongwith CIA officials has been disputed and in fact, the said aspect is sought to be brushed aside, by merely stating that she was not apprehended at that time. No explanation has been given as to where the petitioner was subsequently taken or as to how the 4-5 people from CIA staff were accompanying the petitioner while walking in exactly same direction and in a close proximity. From the perusal of the photographs, it cannot be said that CIA Staff was moving independent of the petitioner. In the present case, there is also a prima facie proof of there being enmity between the police officials and the family of the petitioner inasmuch as even the husband of the petitioner-Gurpreet Singh had been falsely implicated, as is apparent from the judgment dated 07.03.2015 (Annexure A-4), the relevant

portion of which has been reproduced hereinabove, wherein a false case was planted upon the husband of the petitioner, on account of which the Judge, Special Court, Ludhiana had issued direction for taking appropriate action against all the police officials who were involved in false plantation of the said case. In the said case, MHC Jarnail Singh, who had appeared as PW3 therein, is the Investigating Officer in the present case. Apart from the above aspect, there are other arguable points also in the case. In the present case, in addition to recovery made from the scooty, the personal search was also conducted and as per the stand of the respondent, there was admittedly no compliance of Section 50 of the Act of 1985 and thus, it would be a matter of trial as to whether in the given facts and circumstances, moreso where personal search was also conducted, compliance of Section 50 of the Act of 1985 was necessary or not. The petitioner is not involved in any other case and is a registered Pharmacist and has been in custody since 05.03.2021 and challan, in the present case, has already been filed and there are as many as 13 witnesses out of which none have been examined as yet and thus, the conclusion of the trial is likely to take time, moreso, in view of the present COVID-19 pandemic.

With respect to Section 37 of the Act of 1985, it would be relevant to refer to various judgments passed by the Hon'ble Supreme Court as well as by this High Court. 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 Act of 1985 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 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 kg 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.

A Co-ordinate Bench of this Court in CRM-M 10343-2021 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 Act of 1985, 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 the Act of 1985 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 was also made to the Division Bench judgment of this Court in **Daler Singh v. 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 Act of 1985, 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 involved, including the point of false implication. Moreover, the petitioner has already undergone substantial period of custody and would thus be entitled to grant of regular bail. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the Act of 1985.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to her 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).
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 she is accused, or for commission of which she 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/her 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.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

Before parting with this judgment, this Court would also like to make an observation to the effect that it is for the Senior Superintendent of Police, Khanna, to examine the whole matter and after considering the entire record, determine as to whether in the present case, action should be taken against the erring police officials or not. The Senior Superintendent of Police, Khanna, while taking such a decision should aim at balancing the scales, inasmuch as it is on account of some false implication cases, that the recovery in every case is seen with an eye of suspicion. This Court would not like to delve into the issue as to whether action should be taken against the police officials or not and leaves the same to the wisdom of the Senior Superintendent of Police, Khanna, as it is for him to see and ascertain if the police officials working under his authority, are performing their duties with honesty and in accordance with law.

30.11.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No