

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

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**CRM-M-35056-2020
Decided on : 02.09.2021**

Gurpreet Singh @ Preet

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. P. S. Sekhon, Advocate
for the petitioner.

Ms. Jaspreet Kaur, DAG, Punjab.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 162 dated 29.07.2020 under Section 22 and 25 of NDPS Act 1985, registered at Police Station Sadar Bathinda, District Bathinda.

Learned counsel for the petitioner has submitted that even as per the prosecution version, the alleged recovery has been made from the polythene which was lying on the ground. It has been argued that in such a situation, the petitioner cannot be stated to be in conscious possession of the contraband. Reliance for the said proposition has been placed upon a decision of a Coordinate Bench of this Court in CRM-M-16150-2021 dated 19.07.2021 titled as Balwinder Singh Vs. State of Punjab and on judgement in CRM-M-33733-2020 dated 15.03.2021 titled as Manjit Singh Vs. State of Punjab alongwith connected matters. It has further been argued that the petitioner has been in custody since 29.07.2020 and challan

has already been filed and there are 18 witnesses out of which only 2 witnesses have been examined and thus the trial is likely to take time.

Learned counsel for the petitioner has also relied upon a judgement, reported as 2019(4) R.C.R. (Criminal) 714 titled as Ravi Kumar Vs. State of Punjab.

Learned State counsel, on the other hand, has submitted that in the present case, although as per the FIR, the polythene bag was recovered from the ground but there are allegations that the petitioner alongwith the co-accused was standing along side the motorcycle and after seeing the police party, they got perplexed and tried to escape and it is thereafter that the said polythene bag fell down. It is also argued that the petitioner is involved in four other cases i.e. FIR No. 75 dated 29.03.2016 under Section 22 of the NDPS Act and 41/34 IPC, FIR No. 8 dated 03.02.2015 under Section 22 of the NDPS Act, FIR No. 122 dated 20.09.2017 under Section 61,1,14 Excise Act and FIR No. 169 dated 27.07.2017 under Section 61, 1, 14 Excise Act. However, the learned State counsel has not disputed the fact that the petitioner has been in custody since 29.07.2020, challan has been presented and also that only 2 witnesses have been examined out of 18 witnesses.

Learned counsel for the petitioner, in rebuttal to the arguments advanced by learned State counsel, has submitted that in FIR No. 8 as well as FIR No. 75, the petitioner has been acquitted vide detailed judgments dated 4.12.2018 and 18.02.2019 respectively. Even with respect to the FIR No. 122 dated 20.09.2017, it has been submitted that the petitioner has been acquitted in the said case also and for the said

purpose, a reference has been made to para 5 of the reply filed by DSP, Bathinda. FIR No. 169 dated 27.07.2017 is stated to be under the Excise Act in which the petitioner is already on bail.

This Court has heard the learned counsel for the parties. In Balwinder Singh's case (Supra), a Coordinate Bench of this Court has held as under:

“Briefly stated, case of the prosecution against the petitioner is that on 04.03.2019 police party headed by ASI Ravinder Singh on patrolling duty were coming to Tehang Octroi via Saiflabad. When they reached near Civil Hospital, Phillour they saw the petitioner coming on foot who on seeing the police party threw one heavy weight black coloured polythene bag and tried to run away. The police apprehended the petitioner and on search as per prescribed procedure recovered 55 intoxicant injections containing Buprenorphine 2 ml each and 55 injections containing Avil 10 ml each from the polythene bag.

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On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession commercial quantity of intoxicant injections. Rigors of Section 37(1)(b) are fully applicable to the case of the petitioner. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In CRM-M-13662-2020 titled as 'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474-

2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRM-M6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018 and CRM-M-16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020 where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the accused, the case was considered to involve question as to whether the accused could be said to be in conscious possession thereof and the accused was granted regular bail.

In 'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020 where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by Hon'ble Supreme Court.

In the present case recovery of intoxicant injections was allegedly made from polythene bag allegedly thrown on the road side. The case involves debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the polythene bag lying on the road side. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act stand satisfied by due implication. Further, the petitioner is in custody since 04.03.2019. Prosecution evidence is yet to be recorded. The trial is likely to take

long time due to restrictions imposed to prevent spread of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.”

A perusal of the above judgment would show that although in the said case also, the recovery was of commercial quantity but since the recovery of the polythene bag therein was also after the same had been thrown, thus it was observed that it was a debatable issue as to whether the petitioner could be said to be in conscious possession of the same. It was also observed that the rigors of Section 37(1) (B) of the NDPS Act stands satisfied vide due implication.

Even in Manjit Singh's (*supra*) case, a Coordinate Bench of this Court while dealing with the case in which the allegation was that the petitioner therein was holding a polythene bag and on seeing the police party, he threw the said polythene bag. It was observed that it

was not possible to conclude that the recovery was made from the conscious possession of the petitioner therein. The said case was also a case of commercial quantity. Further, in the present case there are two accused and thus, the learned counsel for the petitioner also sought to draw benefit of the judgment in Ravi Kumar's case (*Supra*). It is an admitted case of the parties that the petitioner has been in custody since 29.07.2020 and has suffered incarceration for a period of more than 1 year and 3 month. The challan has already been presented and there are 18 witnesses out of which only 2 have been examined and thus the trial is likely to take long.

Since the issue, whether the petitioner could be stated to be in conscious possession, is debatable, thus, as per the judgments of the Coordinate Bench, the bar under Section 37 would not apply.

Without commenting on the merits of the case and keeping in view the fact that the petitioner has been in custody for more than one year and three months and the trial of the case is likely to take a long time, the petitioner is directed to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed

in this regard.

Accordingly, the present petition is allowed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case.

(VIKAS BAHL)
JUDGE

02.09.2021
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No