

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-44957-2021

Date of decision : 22.12.2021

Virender Singh @ Rinku

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms.Manpreet Ghuman, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.118 dated 17.09.2020 registered under Sections 22, 29, 61 and 85 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short 'NDPS Act') at Police Station Dehlon, District Police Commissionerate Ludhiana.

Learned counsel for the petitioner has submitted that the present case has been registered on the basis of secret information to the effect that Damanpreet Singh and one Ranjeet Singh were selling drugs and were earning lot of profits. After receiving the said secret information, the FIR was registered and in order to apprehend the car in which both of them were travelling along with huge quantity of contraband, a naka was installed and on the basis of same, the said Damanpreet Singh and Ranjeet Singh were apprehended. Damanpreet Singh is alleged to have made a disclosure

statement on 20.09.2020 to the effect that he has been depositing money in the accounts of Gulshan Ramani and Arjun Dev and thus, Gulshan Ramani and Arjun Dev were also arrested. On 09.10.2020 the said Damanpreet Singh further disclosed the name of one Prem Rattan and stated that it was Prem Rattan from whom the drugs were being taken by Damanpreet Singh. The said Prem Rattan was arrested on 09.10.2020. During investigation, raid was conducted on the premises of said Prem Rattan and contraband was recovered from the basement of rented house of the said Prem Rattan. Disclosure statement was made by said Prem Rattan to the effect that the present petitioner was an employee of his and on the basis of said disclosure statement, the present petitioner was arrested on 13.07.2021. No recovery has been effected from the petitioner. Learned counsel for the petitioner has submitted that a coordinate Bench of this Court has already granted bail to Prem Rattan vide judgment dated 24.11.2021 passed in ***CRM-M-16604-2021*** titled as ***“Prem Rattan vs. State of Punjab”*** and to Arjun Dev vide judgment dated 24.11.2021 passed in ***CRM-M-6127-2021*** titled as ***“Arjun Dev vs. State of Punjab”*** and also to Gulshan Ramani vide judgment dated 24.11.2021 passed in ***CRM-M-11569-2021*** titled as ***“Gulshan Ramani vs. State of Punjab”***. It is further submitted that the case of the present petitioner is on a better footing than the case of co-accused Prem Rattan. It is further stated that the petitioner is not involved in any other case and he has been in custody since 13.07.2021 and there are 43 prosecution witnesses and the trial is likely to take time moreso, in view of the present pandemic and prayer for granting concession of regular bail has been made.

Learned State counsel on the other hand has opposed the petition for regular bail and has submitted that in the present case recovery

from Prem Rattan and Damanpreet Singh is of commercial quantity and recovery bears the signature of the petitioner and thus, the petitioner should not be granted the concession of regular bail.

Learned counsel for the petitioner, in rebuttal to the said arguments, has submitted that Prem Rattan is a licenced wholesale dealer having a valid licence and the said fact was considered while granting bail to Prem Rattan by a coordinate Bench of this Court and since the petitioner is an employee of said Prem Rattan, thus, merely on account of the petitioner's signatures on the bill should not come in the way of the petitioner being granted regular bail moreso, Prem Rattan had licence.

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

It is not in dispute that no recovery has been effected from the petitioner. Initially the recovery was from Ranjeet Singh and Damanpreet Singh. The said Ranjeet Singh and Damanpreet Singh had not named the present petitioner in their disclosure statements and in fact, had named Arjun Dev and Gulshan Ramani. The said Arjun Dev and Gulshan Ramani also had not named the present petitioner in their disclosure statements and had disclosed Prem Rattan to be the person who was selling the drugs in question. The said Gulshan Ramani, Arjun Dev and Prem Rattan have already been granted the concession of regular bail vide orders dated 24.11.2021 by a coordinate Bench of this Court. The case of the petitioner is on a higher footing than that of Prem Rattan inasmuch as, the recovery was also effected from the basement of rented house of Prem Rattan and not the house of the petitioner. A coordinate Bench of this Court while granting bail had considered the fact that said Prem Rattan was a licenced wholesale

dealer and his licence had been found to be valid. The relevant portion of the said judgment dated 24.11.2021 passed in the case of Prem Rattan, i.e.

CRM-M-16604-2021 is reproduced hereinbelow:-

“During course of investigation, petitioner is also alleged to have made disclosure statement and in pursuance thereof, the police has raided the premises of the petitioner and recovered contraband from the basement of rented house and house of the petitioner.

Learned counsel for the petitioner submits that the petitioner is a licensed wholesale dealer and has been authorized to sell, stock or exhibit or offer for sale or distribute by wholesale drugs specified in Schedule 'C', C(1) excluding those specified in Schedule X. The licence was issued to the petitioner by the Rajasthan Government on 22.11.2018. In the challan submitted by the Police, existence of licence in favour of the petitioner has been found as a matter of fact, but according to the Police, the licence was issued by the Drug Department, Rajasthan on 22.11.2018 and the same was revoked by the Drug Department on 22.09.2020.

Even with reference to the aforesaid fact, learned counsel for the petitioner submits that on the day of registration of FIR in question on 17.09.2020, the petitioner was having a valid drug licence. The said licence was got revoked in order to have fresh licence in the name of his wife and the same was also granted on 28.09.2020 vide Annexure P-4 attached with the petition. The said licence was issued in the name of Payal Aggarwal (wife of the petitioner).

Vide order dated 12.07.2021, the State was directed to file status report with reference to verification of licence Annexure P-4.

In compliance of the aforesaid order, status report by way of affidavit of Deep Kamal, PPS, Assistant

Commissioner of Police (South) Ludhiana has been filed. In para No.3 of the status report, it has been admitted that licence (Annexure P-4) is a genuine document and the same has been issued by the Assistant Drug Controller, Jaipur.

Learned counsel for the petitioner further submits that the case set up by the prosecution is not in respect of quantity of contraband stocked in the premises of the petitioner, rather the allegation is rested upon the fact that the petitioner was involved in supplying the contraband to Gulshan Ramani and Arjun Dev from whom no recovery of contraband was effected. Petitioner is in custody since 09.10.2020. Challan has been submitted.

Learned counsel further submits that the original accused namely Ranjeet Singh and Damanpreet Singh were arrested on the basis of secret information and recoveries were also effected from their possession and car, still mandatory compliances in terms of Sections 42 and 50 of the NDPS Act have not been made.

Learned counsel also submits that petitioner is also involved in two other cases of similar nature lodged one after the other. In CRM-M No.23941 of 2021 and CRM-M No.35594 of 2021, petitioner has been granted regular bail vide orders dated 21.09.2021 and 27.10.2021 respectively. The aforesaid cases also involved similar allegations against the petitioner.

On the other hand, learned State counsel opposed the bail on the ground that recovery made in this case is commercial in nature.

Since the challan has been presented, therefore, the complicity of the petitioner based on disclosure statement of co-accused would remain debatable at the threshold of his being wholesale supplier of drugs in Rajasthan.

Keeping in view the totality of facts and circumstances of the case and in view of the situation arising out due to COVID-19 pandemic, I deem it appropriate to enlarge the petitioner on regular bail, without advertting to the merits of the case,

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate & heavy bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.”

A perusal of above order would show that Prem Rattan was also involved in other cases, whereas the present petitioner is not involved in any other case.

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***, was pleased to grant 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 a 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 provision of Section 37 of NDPS Act was 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.

A Division Bench of this Court in ***Daler Singh's*** case (supra) after taking into consideration the provision of Section 37 of the NDPS Act and the fact that the first appeal arising from conviction, due to certain considerations, takes substantial time before the same can be heard and finally adjudicated upon, laid down certain guidelines for the grant of suspension of sentence in paragraph 29 of the said judgment, which is reproduced as under:-

“We, therefore, feel that keeping in view the spirit of Article 21, the following principles should be adopted for the release of the prisoners (convicts) on bail after placing them in different categories as under:

(i) Where the convict is sentenced for more than ten years for having in his conscious possession commercial quantity of contraband, he shall be entitled to bail if he has already undergone a total sentence of six years, which must include atleast fifteen months after conviction.

(ii) Where the convict is sentenced for ten years for having in his conscious possession commercial quantity of the contraband, he shall be entitled to bail if he has already undergone a total sentence of four years, which must include atleast fifteen months after conviction.

(iii) Where the convict is sentenced for ten years for having in his conscious possession, merely marginally more than non-commercial quantity, as classified in the table, he shall be entitled to bail if he has already undergone a total sentence of three years, which must include atleast twelve months after

conviction.

(iv) The convict who, according to the allegations, is not arrested at the spot and booked subsequently during the investigation of the case but his case is not covered by the offences punishable under Section 25, 27-A and 29 of the Act, for which in any case the aforesaid clauses No. (i) to (iii) shall apply as the case may be, he shall be entitled to bail if he has already undergone a total sentence of two years, which must include atleast twelve months after conviction.”

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 matter 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. Another Coordinate Bench of this Court in CRM-M 10343 of 2020 titled as “**Ajay Kumar @ Nannu vs. State of Punjab**” 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, 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, 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. Vipansood and another**”.

The Hon'ble Supreme Court of India vide order dated

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 was likely to take time.

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 placed to grant bail wherein the quantity of the contraband was commercial in nature.

From the above reproduced judgments, it is apparent that the benefit of suspension of sentence/concession of regular bail can be granted in cases involving recovery of commercial quantity of narcotic drugs/substances, where substantial arguments are raised showing that the petitioner has a prima facie good case on merits and substantial period of custody.

Keeping in view the above said facts and circumstance moreso, the fact that there are arguable points in the present petition inasmuch as no recovery has been made from the present petitioner and the petitioner has not been named by Ranjeet Singh and Damanpreet Singh from whom the recovery has been made and is not involved in any other case and the case of the petitioner is on a better footing than that of Prem Rattan who has already been granted regular bail by a coordinate Bench vide order dated 24.11.2021, the present petition for regular bail is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him 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 he is accused of, 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.

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

(VIKAS BAHL)
JUDGE

December 22, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No