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

CRM-M-46920-2021

Date of decision : 15.11.2021

Sukhwant Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

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

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.72 dated 18.05.2021 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”), Section 25 of the Arms Act, 1959 and Sections 395, 427, 216 and 34 of the Indian Penal Code, 1860 at Police Station Satnali, District Mahendergarh (District Narnaul).

The prosecution case is that secret information had been received to the effect that one Canter had been parked near Village Barda and since, there was suspicion that there were some intoxicant substances in the same, and finding the said information to be credible, a police team was formed to conduct the raid. Efforts were made to join witnesses from

the public but the people showed their inability to do so and when the police party reached near the Canter, no person was found present near it and thereafter, a notice under Section 42 of the Act of 1985 was prepared and was forwarded to the Duty Magistrate. The Duty Magistrate reached at the spot and in his presence, the search of the Canter was conducted. During the search, 17 quintals 12 kg and 760 grams of huge quantity of *ganja* was recovered from the said Canter. During the search of cabin of the Canter, one Driving Licence issued in the name of Ravi Kumar son of Om Parkash and one Aadhaar Card also, in the name of Ravi Kumar, were recovered and the FIR was registered against the unidentified persons. Thereafter, co-accused Sandeep, Ajit, Rohit and Kuldeep were arrested. The present petitioner was also arrested on 25.05.2021.

Learned counsel for the petitioner has argued that the petitioner was not named in the FIR and he has nothing to do with the said occurrence inasmuch as neither he is the owner of the Canter nor is alleged to be the driver of the Canter. It is further submitted that no recovery has been effected from the petitioner nor the petitioner can be stated to be in conscious possession of any intoxicant much less intoxicant substance that has been recovered. It is argued that even as per the alleged disclosure statement of the petitioner (Annexure P-2), only role which has been attributed to the petitioner is that he had promised the co-accused, who had allegedly brought *Ganja* from the State of Orissa, to inform them about safe passage in the area of Satnali. It is further argued that even as per the said disclosure statement (Annexure P-2), the

petitioner was not the person, who was either driving the Canter or was even in the Canter and was stated to be in a Duster Car which was following the Canter. It is contended that it is Ravi Kumar, who was the driver of the Canter and the said *Ganja* was stated to be allegedly purchased from State of Orissa, by Lakhmi and Kuldeep. It is further contended that there is no allegation against the petitioner that he had either purchased the intoxicant/narcotic substance or sold the same or was in conscious possession of the same or was even present in the Canter in which the said contraband was being carried. It is stated that no recovery has been effected from the petitioner and thus, reliance has been placed upon an order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled *Mewa Singh Vs. State of Punjab*, and an order of another Coordinate Bench dated 16.07.2021 passed in CRM-M-12997-2020 titled as *Daljit Singh Vs. State of Haryana* to contend that in such like cases if a person has been proceeded against only on the basis of disclosure statement and no recovery has been effected from the petitioner, then he should be granted the benefit of bail. It is also submitted that the petitioner is not involved in any other case.

Learned Counsel for the petitioner has further contended that the petitioner has been in custody since 25.05.2021 and the challan has been presented and there are as many as 28 witnesses, out of which, none have been examined as yet and thus, the conclusion of the trial is likely to take a long time, moreso, in view of the COVID-19 pandemic.

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:

- i) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina v. Union of India.**
- ii) 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.
- iii) Judgment of a Co-ordinate Bench in CRM-M-20177-2020 titled as **Narcotic Control Bureau v. Vipin Sood 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.
- iv) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.668 of 2020 titled as **"Amit Singh @ Moni v. Himachal Pradesh.**
- v) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and** another.
- vi) 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.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and stated that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of regular bail to the petitioner and has submitted that the quantity recovered in the present case is a huge quantity and there are call details between the petitioner and co-accused Lakhmi. However, other averments and facts as stated by the learned counsel for the petitioner, have not been disputed by him.

This Court has considered the arguments of learned counsel for the parties and perused the paper book.

It is not in dispute that the petitioner was not named in the FIR and even the documents recovered from the Canter in question, are with respect to co-accused Ravi Kumar. The Canter, is neither owned nor was being driven by the petitioner nor it is the case of the prosecution that the petitioner was sitting/present in the Canter. The petitioner is neither stated to be the person who had purchased the *Ganja* from the State of Orissa nor the person who had sold the same. The only allegation against

the petitioner, even as per his own disclosure statement (Annexure P-2), is that the petitioner was giving information with respect to safe passage for the said Canter while sitting in a Duster Car. The question i.e. as to whether when the petitioner was not even sitting in the Canter in question, the petitioner could be considered to be in conscious possession of the contraband, is a moot point, which would be decided during the course of trial. It is co-accused persons Lakhmi and Kuldeep, who have been stated to bring *Ganja* from the State of Orissa and it is co-accused Ravi Kumar, who was driving the Canter. Even, after the said disclosure statement has been recorded, no recovery has been effected from the petitioner. It is further not in dispute that the petitioner is not involved in any other case. The petitioner is stated to be in custody since 25.05.2021 and there are as many as 28 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.

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, 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 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 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 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 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 is of the opinion 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 since 25.05.2021 and all the abovesaid factors are sufficient to entitle the petitioner for the concession 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 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.

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.

15.11.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No