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

CRM-M-764-2022

Date of decision : 12.12.2022

Angrej Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.82 dated 10.09.2021 registered under Section 21(c) of the NDPS Act, 1985 (Section 29 of the NDPS Act, 1985 has been added later on) at Police Station Sarai Amanat Khan, District Tarn Taran.

Learned counsel for the petitioner has submitted that in the present case, two persons namely Jaspal Singh and Balwinder Singh were apprehended and recovery of 460 grams of heroin from Jaspal Singh and recovery of 40 grams of heroin from Balwinder Singh was effected on 10.09.2021. It is further submitted that it is the case of the prosecution that the said Jaspal Singh had given a disclosure statement on 10.09.2021 implicating the present petitioner in the case. It is argued that no zimni order

was passed on 10.09.2021 and it is only on the basis of DDR No.27 dated 03.10.2021, vide which, the offence under Section 29 of NDPS Act was added, that the petitioner was arrested on 03.10.2021. It is further argued that no personal search of the petitioner was carried out and it is only subsequently, that the recovery of 50 grams of heroin had been effected from an open place, which was stated to have been disclosed by the present petitioner. It is contended that there is no link between the petitioner and co-accused Jaspal Singh or Balwinder Singh and there is no material to even remotely connect the petitioner with the recovery which has been effected from the said Jaspal Singh and Balwinder Singh. It is further contended that the recovery, at the behest of the petitioner is of 50 grams of heroin which is non-commercial quantity and the petitioner has been in custody since 03.10.2021 and investigation is complete and challan has been presented and there are 15 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time and the petitioner is not involved in any other case. In support of his arguments, learned counsel for the petitioner has relied upon **order dated 30.11.2022** passed by the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) No.4729/2022** titled as **Abu Taher Mandal @ Sentu Vs. The State of West Bengal** as well as **order dated 14.09.2022** passed by a Coordinate Bench of this Court in **CRM-M-4814-2022** titled as **Kali Kaur Vs. State of Punjab**.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the recovery effected in the present case, if taken as an aggregate, would fall within the ambit of commercial quantity and thus, Section 37 of

the NDPS Act 1985 would apply in the present case.

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

A Coordinate Bench of this Court in ***Kali Kaur's case*** (Supra), was pleased to hold as under:-

I have considered the submissions made by counsel for the parties.

Admittedly the petitioner was not named in the FIR. As per prosecution version 400 grams of Heroin was recovered from the possession of non-applicant Rani Kaur who was travelling in a car with non-applicant Dilbagh Singh, Rajni Bala @ Rosy and Jagsir Singh on 28.11.2021. There are also allegations that aforesaid Rani Kaur made disclosure against the present petitioner and accordingly the present petitioner was nominated as an accused and 10 grams of Heroin was recovered from her possession on 16.12.2021 and since then she is in custody in the present case. The State counsel has failed to show that the present petitioner was having any acquaintance with aforesaid Rani Kaur. The State counsel has admitted that there is no call detail record to connect the petitioner with recovery of 400 grams of Heroin from the possession of Rani Kaur.

It is a moot point as to how the petitioner is liable for recovery of 400 grams of Heroin, which is stated to have been effected from conscious possession of Rani Kaur.

As per prosecution version, only 10 grams of Heroin was recovered from the conscious possession of the petitioner, which comes under non-commercial quantity and thus embargo of Section 37 NDPS Act is not applicable to the case of the petitioner.

Further the police has presented the challan after

completion of investigation and charges have been framed, but it will take considerable time for the trial to conclude. As per the custody certificate furnished by the State counsel, the petitioner is already in custody for about 9 months and is recorded to be on bail in the another criminal cases which are being faced by her.

In view of the above, as it will take time for the trial to conclude, so no purpose is going to be served by keeping the accused behind the bars for any longer period.

Thus without commenting on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail subject to her furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

Sd/-(KARAMJIT SINGH)

14.09.2022

JUDGE”

A perusal of the above order would show that in the said case, although, recovery from the non-applicant was of 400 grams of heroin, which quantity falls under commercial category, and the petitioner therein had been nominated on the basis of the disclosure statement made by the said non-applicant Rani Kaur and thereafter recovery effected from the petitioner therein was of 10 grams of heroin, which quantity falls under non-commercial category and the Coordinate Bench after considering that there were no call detail records between the petitioner therein with Rani Kaur so as to connect her with the recovery of 400 grams of heroin, had granted bail to the petitioner therein.

The Hon'ble Supreme Court of India in ***Abu Taher Mandal @ Sentu's case*** (Supra) was considering the bail application of the accused petitioner therein from whom the recovery of 61 grams of heroin had been

effected and who was implicated on the basis of the statement of the principle accused Mohammad Shamim from whom recovery of 786 grams of heroin had been effected. One of the factors which was considered by the Hon'ble Supreme Court was that the recovery effected from the said petitioner was not of commercial quantity. Although, in the said case, there were other factors including the fact of long custody undergone by the petitioner therein and the Hon'ble Supreme Court after considering these aforesaid factors, was pleased to grant bail to the petitioner therein.

In the present case, the petitioner is in custody since 03.10.2021 and the investigation is complete and challan has been presented and out of 15 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case. The recovery effected in pursuance of the disclosure statement of the present petitioner from the open place was of 50 grams of heroin which quantity would fall within the non-commercial category. There is no material produced before this Court so as to show that there was any link between the petitioner and the said Jaspal Singh or Balwinder Singh from whom the recovery of 460 grams and 40 grams of heroin had been effected, respectively. The question as to whether the petitioner can be linked to the said recoveries effected from the abovesaid Jaspal Singh and Balwinder Singh would be a moot point, which would be determined during the course of the trial.

Keeping in view the abovesaid facts and circumstances and also the abovesaid orders passed by the Hon'ble Supreme Court and the Coordinate Bench of this Court and also keeping in view the custody

undergone by the petitioner and the stage of the trial and the recovery effected in pursuance of the disclosure statement of the present petitioner, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an 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 application.

12.12.2022
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**