

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-984-2021

Date of Decision:-19.04.2022

Sukhdev Singh @ Sukh.

.....**Petitioner.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Prateek Sodhi, Advocate for the Petitioner.

Ms. Jaspreet Kaur, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.65 dated 29.05.2020 under Sections 21, 25, 29, 61 85 of NDPS Act registered at Police Station STF SAS Nagar, Mohali.

2. The brief facts of the case are that the FIR came to be registered on the basis of secret information as per which Sukhdev Singh @ Sukh son of Jaspal Singh resident of Mulianwala, Sarban Singh son of Gurmej Singh resident of Mulianwala and Yadwinder Singh @ Rinku son of Surjit Singh resident of Angarh, Manbir Singh resident of Fatehgarh Shukarchak and Deepu resident of Jandiala Guru in connivance with each other were doing the work of selling heroin. As per the secret information, Sukhdev Singh @ Sukh, Sarban Singh and Yadwinder Singh would be travelling by motor

cycle bearing registration no.PB-06AW-8419 Black Grey colour make Platina and if a *nakabandi* would be conducted these three persons could be apprehended. Based on the said information the three persons were apprehended at a *naka* and 300 grams of heroin was recovered from under the seat. The petitioner herein was one of the pillion riders and the driver/owner of the motor cycle was co-accused Sarban Singh.

The counsel for the petitioner contends firstly that nothing was recovered from the petitioner and the recovery, if any, was from the bike belonging to the co-accused Sarban Singh and, therefore, he could not be said to be in conscious possession of the same. He next contends that the petitioner is in custody since May 2020 and the investigation having been completed and the challan having been filed, the further incarceration of the petitioner was not required moreso when he did not have any criminal antecedents. He relies upon various judgments of this Court in **Balkar Singh @ Jogi Vs. State of Punjab** bearing **CRM-M-12945-2018** Decided on **03.05.2018**, **Pushpa Vs. State of Haryana** bearing **CRM-M-28274-2021(O&M)** Decided on **26.07.2021**, **Simarjeet Singh Vs. State of Punjab** bearing **CRM-M-12853-2021** Decided on **12.08.2021**, **Kabal Singh Vs. State of Punjab** bearing **CRM-M-31509-2020(O&M)** Decided on **02.09.2021**, **Gurpreet Singh Vs. State of Punjab** bearing **CRM-M-45214-2021** Decided on **23.03.2022** & **Harvinder Singh @ Neenu Vs. State of Punjab** bearing **CRM-M-32127-2021(O&M)** Decided on **03.09.2021**. He also contends that the judgment of Hon'ble Supreme Court in **Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan Criminal Appeal No.1043 of 2021** Decided on **22.09.2021** which deals with the issue of conscious possession would not affect the case of the

petitioner because the facts of the case before the Hon'ble Supreme Court were different from the facts of the present case. He thus contends that the petitioner deserves the concession of regular bail.

The Counsel for the State on the other hand has opposed the bail application primarily on the ground that the secret information named all the accused and, therefore, the petitioner was in conscious possession of the contraband though admittedly nothing was recovered from his personal possession.

I have heard learned Counsel for both the parties at length.

In the case of ***Union of India through Narcotics Control Bureau, Lucknow Vs. Md. Nawaz Khan (supra)*** the allegations were that three persons who were residents of Manipur were travelling from Nagaland to Uttar Pradesh and were said to be carrying heroin/morphine in a Maruti Ritz car. On the receipt of the information the car was intercepted and the occupants thereof were searched. Nothing objectionable was found from their personal search. However, a search of the car revealed two polythene packets hidden under the place where wiper is connected to the front bonnet of the car. On being weighed the recovery of heroin was found to be of commercial quantity i.e. More than 3Kgs. Mohd. Nawaz Khan (the respondent in the said case) was granted the concession of regular bail by the High Court on the premise that he was not in conscious possession of the contraband being a companion in the vehicle which was being driven by the co-accused Rafiuddin. On appeal, the Hon'ble Supreme Court cancelled the bail so granted and while discussing the law pertaining to conscious possession held as under:-

“ *The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail,*

having regard to the provisions of [Section 37](#):

- (i) *The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused;*
- (ii) *The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him;*
- (iii) *The quantity of contraband found in the vehicle is of a commercial quantity; and*
- (iv) *The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.*

In the present case, the facts are undoubtedly different as has been pointed out by the learned Counsel for the petitioner. Firstly, the petitioner has not travelled a long way along with the owner/driver of the motor cycle, namely, Sarban Singh so as to establish some sort of prior connect/conspiracy between the two and there is no evidence available of any prior contact of any sort between the petitioner and the bike owner/driver.

In view of the above, it cannot be presumed that the petitioner and his co-accused were in conscious possession of the contraband which was hidden under the seat and it is quite possible that the petitioner took a lift from the main accused.

With respect to the grant of bail where recovery of commercial quantity of contraband has been effected, the learned counsel for the petitioner has also highlighted the fact that in various cases where the 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 charge sheet 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.

After noticing the bar under Section 37 of the Act, Hon'ble Supreme Court in ***Union of India Vs. K.A. Najeeb 2021(2) RCR (Criminal) 145*** has held that once timely trial is not possible, the Court is obligated to release the accused, who is in custody for extended period of time, on bail. In ***Criminal Appeal No.245 of 2020 (SLP Criminal No.8823 of 2019) titled as Chitta Biswas @ Subhas Versus The State of West Bengal***, the apex Court ordered the release of the accused on bail in a case involving commercial quantity of contraband, after he had undergone more than two years of custody taking into account the stage of the trial.

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**, titled as **Vipan Sood Vs. State of Punjab & Anr.** 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. Vipan 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 vs. National Investigating Agency and another”**, granted suspension of sentence in a case where the recovery was of commercial quantity. In the above mentioned 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** reported as **(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** reported as 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.

Keeping in view the facts and circumstances of the present case and also the fact that there are arguable points in the present case and the custody of the petitioner is substantial i.e. since May 2020 and the trial is likely to take time, the present petition is allowed and the petitioner- **Sukhdev Singh @ Sukh** son of Surjit Singh is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate, Mohali and subject to them not being required in any other case. Moreover, to meet the object of Section 37 of the NDPS Act, this Court proposes to impose the following conditions that the petitioner shall abide by:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioners will not pressurize / intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the

date fixed, unless his 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.
- 6. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime.

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.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

April 19, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>