

216

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

CRM-M-1677-2022

Date of decision : 03.02.2022

Tarsem Masih

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gobind Singh Randhawa, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.133 dated 02.11.2021 registered under Sections 15(C), 29/61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Bhogpur, District Jalandhar (Rural).

The present FIR has been registered on the basis of ruqa sent by the Sub-Inspector Navdeep Kaur to the effect that she alongwith ASI Satpal Singh and other police officials were in the Government Vehicle and were patrolling the area when the secret informer came present and informed that Chaman Lal (co-accused) and Shinder Pal Singh (co-accused), commuting by Canter bearing registration No. PB-23M-7691, being the driver and cleaner of the same respectively, were carrying poppy husk by hiding the

same under the boxes of apples, which they were getting from Srinagar and were to supply the same to the customers at Jalandhar city and in pursuance of the said secret information, the barricades were set up and during checking, at the 'naka', the abovesaid canter was intercepted and the said co-accused Chaman Lal and Shinder Pal Singh were apprehended, and thereupon, the recovery of 110 kg of poppy husk from the canter was effected. It is further the case of the prosecution that the said accused Chaman Lal had made a disclosure statement to the effect that he, alongwith Shinder Pal Singh, had purchased five plastic bags total weighing 22/22 kg of poppy husk from one *Dhaba* and had loaded them in their canter and the present petitioner and co-accused Sukhdev Raj @ Sukha had purchased 30 kg of poppy husk from the same *Dhaba* and had loaded the same in the cabin of their truck bearing registration No.PB-10BZ-7207.

Learned counsel for the petitioner has submitted that in the present case, at best, the recovery from the truck in which the present petitioner was travelling i.e. PB-10BZ-7207 was of 30 kg of poppy husk and the same is non-commercial quantity. It is further submitted that under no circumstance, recovery made from the canter bearing registration No.PB-23M-7691, of 110 kg of poppy husk, could be clubbed with the recovery made from the truck bearing registration No.PB-10BZ-7207. It is argued that perusal of the FIR would also show that no secret information had been received against the present petitioner and the secret information received was only against the co-accused Chaman Lal and Shinder Pal Singh and was with respect to canter bearing registration No.PB-23M-7691 and it is from the said vehicle, that the recovery of 110 kg of poppy husk has been

effected. The petitioner was not present in the said canter bearing registration No.PB-23M-7691 and thus, any recovery made from the said canter could not be foisted upon the present petitioner. It is further argued that the petitioner is not involved in any other case and has been in custody since 02.11.2021 and the challan in the present case has already been presented and since, the charges have to be framed, thus, the conclusion of the trial is likely to take time, moreso in view of the present COVID-19 pandemic. Learned counsel for the petitioner has further submitted that the co-accused of the petitioner Sukhdev Raj @ Sukha has already been granted regular bail vide order dated 01.02.2022 passed in CRM-M-3293-2022 and the case of the petitioner is on the same footing as that of Sukhdev Raj @ Sukha.

Notice of motion.

On advance notice, Mr. Karanbir Singh, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted 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 recovery of 110 kg of poppy husk is from the canter bearing registration No.PB-23M-7691, but perusal of the disclosure statement made by the Chaman Lal would show that the present petitioner and the co-accused Sukhdev Raj @ Sukha were involved in the said business and had been going to Srinagar and returning together and had even made the alleged purchase from one *Dhaba* only and thus, it is submitted that the entire recovery made from both the vehicles, should be taken into consideration for the purpose of determination of the present petition for

grant of regular bail.

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

Though, claiming for the petitioner's case to be involving non-commercial quantity of contraband, learned counsel for the petitioner has also highlighted the fact that in various cases, even where recovery of commercial quantity was involved, there, 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. Vipansood 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.

In the present case, it is not in dispute that the secret information was with respect to canter bearing registration No.PB-23M-7691, in which the present petitioner was not travelling. The secret information was with respect to co-accused Chaman Lal and Shinder Pal Singh, who were travelling in the abovesaid vehicle. The recovery of 110 kg of poppy husk was also made from the said canter and thus, at best, only those two persons could be stated to be the persons from whom the said recovery of 110 kg of poppy husk has been made. The petitioner and the co-accused Sukhdev Raj @ Sukha have been implicated in the present case on the basis of disclosure statement of the co-accused namely Chaman Lal. A careful perusal of the said statement of co-accused Chaman Lal would show

that it had been stated by him that he and Shinder Pal Singh had purchased five plastic bags weighing 22/22 kg of poppy husk from one *Dhaba* and had loaded them in the canter (PB-23M-7691) and the present petitioner and Sukhdev Raj @ Sukha had also purchased 30 kg of poppy husk from the same *Dhaba* and had loaded the same in the cabin of their truck (i.e. PB-10BZ-7207). It is not in dispute that recovery from the truck in which the petitioner was sitting i.e. PB-10BZ-7207 was of two bags of poppy husk of 15 kg each i.e. 30 kg total. The commercial quantity, as per the law, is 50 kg and above. The question as to whether the recovery effected from the other vehicle i.e. PB-23M-7691, in which the petitioner was neither the driver, nor present otherwise, could also be clubbed with the recovery effected from the truck in which the petitioner was sitting i.e. PB-10BZ-7207, would be a matter of trial. As the facts stand today, from the record, recovery made from the truck which the petitioner was driving was of 30 kg of poppy husk. The same is non-commercial quantity. The petitioner is not involved in any other case. The petitioner has been in custody since 02.11.2021 and the challan in the present case has already been presented and the charges have not been framed as yet and thus, the conclusion of the trial is likely to take time, moreso in view of the present COVID-19 pandemic and the co-accused of the petitioner Sukhdev Raj @ Sukha, who is similarly placed as the present petitioner has been granted the concession of regular bail by this Court vide order dated 01.02.2022 passed in CRM-M-3293-2022.

From the abovesaid facts, it is apparent that there are arguable points in the case to be determined during trial and accordingly, 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 concerned trial Court/Duty Magistrate, subject to his 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, 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.

03.02.2022

Mehak

**(VIKAS BAHL)
JUDGE**

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