

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106+212

CRM-M-6960-2022 (O&M)

Decided on : 13.07.2022

Joginder Singh @ Jinder

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. K. S. Dargan, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (Oral)

CRM-13026-2022

Present application has been filed under Section 482 Cr.P.C.
for placing on record the copies of bail order of the co-accused.

Learned counsel for the applicant-petitioner seeks to
withdraw the present application.

In view of the same, present application is dismissed as
withdrawn.

Main Case

The present petition has been filed under Section 439
Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 25
dated 28.03.2021 under Sections 22 and 29 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (Section 61 of the NDPS Act added
later on) registered at Police Station Khui Khera, District Fazilka.

Learned counsel for the petitioner has submitted that in the present case, no recovery has been effected from the present petitioner inasmuch as, even as per the prosecution case, the petitioner was not apprehended at the spot. It is further submitted that although, as per the FIR, there were 5 police officials at the alleged spot yet it has been alleged that the present petitioner was able to escape away from the spot despite them being there, whereas the two other persons namely Kashmir Singh and Maya Bai were arrested at the spot. It is contended that the said two co-accused have already been granted regular bail vide order dated 08.02.2022 passed in CRM-M-33292-2021. It is further contended that it is highly unlikely for three persons to be riding on a single motorcycle, moreso, with two persons being aged 65 years and 62 years respectively, i.e. the age of the co-accused and further highly unlikely for a person to be able to run away in the presence of five police officials. It is argued that infact, the police officials were not present at the spot at the time of the alleged occurrence and for the said purpose, the co-accused had moved an application for preserving their call details and tower location and the said application has been allowed vide order dated 01.07.2021. It is submitted that the petitioner has been in custody since 16.08.2021, the challan has already been presented and the investigation is complete and there are as many as 17 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case.

Learned counsel for the petitioner has also relied upon a

judgment, reported as **2019(4) RCR (Criminal) 714** titled as ***Ravi Kumar Vs. State of Punjab.***

Learned State counsel, on the other hand, has opposed the present application for regular bail and has submitted that the petitioner had managed to escape but however, the name of the petitioner has been mentioned by the co-accused, who were arrested at the spot. The petitioner is of 33 years of age.

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

The co-accused of the petitioner, who were apprehended at the spot namely Kashmir Singh and Maya Bai, had filed CRM-M-33292-2021 for regular bail which was allowed vide order dated 08.02.2022, the relevant portion of which is reproduced hereinbelow:-

“This Court has heard the learned counsel for the parties. In Balwinder Singh's case (Supra), a Coordinate Bench of this Court has held as under:

“Briefly stated, case of the prosecution against the petitioner is that on 04.03.2019 police party headed by ASI Ravinder Singh on patrolling duty were coming to Tehang Octroi via Saiflabad. When they reached near Civil Hospital, Phillour they saw the petitioner coming on foot who on seeing the police party threw one heavy weight black coloured polythene bag and tried to run away. The police apprehended the petitioner and on search as per prescribed procedure recovered 55 intoxicant injections containing Buprenorphine 2 ml each and 55 injections containing Avil 10 ml each from the polythene bag.

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On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession commercial quantity of intoxicant injections. Rigors of Section 37(1)(b) are fully applicable to the case of the petitioner. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In CRM-M-13662-2020 titled as 'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M14474- 2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRMM6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018 and CRM-M-16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020 where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the accused, the case was considered to involve question as to whether the accused could be said to be in conscious possession thereof and the accused was granted regular bail.

In 'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020 where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted

bail by Hon'ble Supreme Court.

In the present case recovery of intoxicant injections was allegedly made from polythene bag allegedly thrown on the road side. The case involves debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the polythene bag lying on the road side. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act stand satisfied by due implication. Further, the petitioner is in custody since 04.03.2019. Prosecution evidence is yet to be recorded. The trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.”

A perusal of the above judgment would show that although in the said case also, the recovery was of commercial quantity but since the recovery of the polythene bag therein was also after the same had been thrown, thus it was observed that it was a debatable issue as to whether the petitioner could be said to be in conscious possession of the same. It was also observed that the

rigors of Section 37(1) (B) of the NDPS Act stands satisfied vide due implication.

Even in Manjit Singh's (supra) case, a Coordinate Bench of this Court dealt with the case in which the allegation was that the petitioner therein was holding a polythene bag and on seeing the police party, he threw the said polythene bag. It was observed that it was not possible to conclude that the recovery was made from the conscious possession of the petitioner therein. The said case was also a case of commercial quantity. Further, in the present case, it is the son of the petitioners who had thrown the plastic bag, which was found fallen on the ground and it is stated that the said person had run away from the spot. The petitioners are old persons aged 65 years and 62 years respectively and have never been involved in any other criminal case and have been in custody since 28.03.2021 and there are 17 witnesses out of which none have been examined and thus, the trial is likely to take time, moreso in view of the present COVID-19 pandemic situation.

Since the issue, whether the petitioners could be stated to be in conscious possession, is debatable, thus, as per the judgments of the Coordinate Bench, the bar under Section 37 would not apply.”

The case of the petitioner is on better footing than the case of the abovesaid co-accused. Moreover, the present petitioner has not been apprehended at the spot. It would be a matter of debate as to whether it could have even been possible for the present petitioner to be able to escape in the presence of 5 police officials and as to whether, in such a situation, it could be stated that the petitioner was in conscious possession of the tablets which have been allegedly recovered from the accused and the same would be adjudicated during the course of trial. The petitioner has been in custody since 16.08.2021, the challan has already been presented and there are as many as 17 prosecution witnesses, none of

whom have been examined, thus, the trial is likely to take time. The petitioner is not involved in any other case.

Without commenting on the merits of the case and keeping in view the fact that the petitioner has been in custody for more than ten months and the trial of the case is likely to take a long time, the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him not being required in any other case.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after being released on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, the bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

Accordingly, the present petition is allowed.

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.

(VIKAS BAHL)
JUDGE

July 13th, 2022
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No