

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(209)

CRM-M-4697-2022

Date of decision: - 15.07.2022

Mohnish Mohan

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. L.M. Gulati, Advocate, for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.119 dated 14.07.2021, registered under Sections 22/61 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (Section 29 of the NDPS Act has been added later on), at Police Station Lalru, District SAS Nagar, Mohali.

Learned counsel for the petitioner has submitted that the petitioner has not been named in the FIR and the alleged recovery on the basis of suspicion has been effected from co-accused Ashok Kumar and Kala Ram as per the FIR. It is further submitted that in the present case, a detailed reply/status report has been filed by the Deputy Superintendent of Police, Sub Division Derabassi, District SAS Nagar, Mohali, in which, it has been stated that the said Ashok Kumar and Kala Ram during the course of investigation had stated in their respective disclosure statements that they used to purchase the intoxicant tablets and capsules from one

Mohammad Sajid, who owns a Medical Store at Chutmulpur, Near Cholipur Bus stand and the recovered intoxicating tablets and the recovered intoxicating tablets and capsules were also purchased from the aforesaid Mohammad Sajid and accordingly the said Mohammad Sajid was nominated as an accused on 14.07.2021. It is also submitted that as per the said reply, there is no link of the petitioner with the alleged recovery, although, in para No.11, it has been stated that the police officials raided the office of the company-Unique Formulation, which belongs to the petitioner, but on enquiry made from one Hasim, who was the watchman of the office of the Company, stated that the owner of the company i.e., present petitioner is already in custody in FIR No.51 dated 18.05.2021. It is further submitted that as per the said prosecution version, no recovery has been effected from the premises of the company of the petitioner or from the petitioner. It is contended that no recovery has been effected subsequent to/in pursuance of the said raid. It is submitted that there is nothing to link the present petitioner with the intoxicant tablets, which have been recovered. Learned counsel for the petitioner has further submitted that although there is no link connecting the present petitioner to the present case, but the petitioner had stated in his disclosure statement recorded dated 20.10.2021, as noticed in para No.18 of the reply, that he had manufactured the tablets containing Tramadol Hydrochloride in his factory, namely, Unique Formulation and the packaging had been done and the said batch was given to Balaji Medical Agency. It is further submitted that the petitioner has a licence dated 04.06.2020 (Annexure P-2) in his favour and had sold the drugs

allegedly recovered to Balaji Medical Agency and for the said purpose, the petitioner had produced on record the invoice dated 17.04.2021 (Annexure P-4). It is also submitted that although, the prosecution has not been able to establish a link, but the petitioner has himself tried to assist the prosecution by giving said documents. It is further submitted that the petitioner has been in custody since 19.10.2021 and there are 18 prosecution witnesses, none of whom have been examined and thus, the trial is likely to take time.

Learned State counsel on the other hand has opposed the present petition for regular bail and has submitted that it is the own case of the present petitioner that he has manufactured the tablets which have been recovered and the question as to how the same had fallen into the wrong hands and for the same, the petitioner needs to be questioned. It is further submitted that the petitioner is involved in two other cases also and has thus, opposed grant of regular bail to the petitioner.

Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in “**Maulana Mohd. Amir Rashadi Vs. State of U.P. and another**”, reported as 2012 (2) SCC 382 to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot

be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

Before advertng to the facts of the present case, it would be relevant to note that in various cases where recovery of commercial quantity has been effected, the Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the custody undergone by the accused in 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 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*; (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, the petitioner has been in custody since 19.10.2021 and out of the total 18 prosecution witnesses, none have been examined, thus, the trial is likely to take time. The petitioner was not named in the FIR and the alleged recovery had been effected from co-accused, namely, Ashok Kumar and Kala Ram and even after the petitioner was implicated in the present case, no subsequent recovery has been effected from him. A perusal of the reply filed by the Deputy

Superintendent of Police, Sub Division Derabassi, District SAS Nagar, Mohali would show that co-accused Ashok Kumar and Kala Ram had stated that they had purchased the intoxicant tablets from Mohammad Sajid and thereafter, Mohammad Sajid was arrested. In the said reply, nothing has surfaced to show on what basis the premises of the Company Unique Formulation, which is owned by the present petitioner, was raided on 15.07.2021. Moreover, it is not the case of the prosecution that any recovery has been effected from the premises of the company of the petitioner or from the petitioner after his arrest. It is the case of the petitioner that his company Unique Formulation has a licence to manufacture the drugs in question and the said licence dated 04.06.2020 is annexed as Annexure P-2 and the petitioner had sold the same to Balaji Medical Store, vide invoice No.105 dated 17.04.2021 (Annexure P-4), in which, they had specifically mentioned the batch number. The question whether the petitioner is involved in the present case or not and whether the petitioner has sold the drugs/tablets to unauthorized persons, would be finally adjudicated during the course of the trial.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on 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 petition.

July 15, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes