

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(211)

CRM-M-5404-2022

Date of decision: - 17.02.2022

Sunder Singh

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Balraj Gujjar, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the second petition for grant of regular bail to the petitioner in FIR No.72 dated 18.05.2021, registered under Section 20-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the NDPS Act”), Section 25 of the Arms Act, 1959 and Sections 395, 427, 216 and 34 of the Indian Penal Code, 1860, at Police Station Satnali, District Mahendergarh (District Narnaul).

Learned counsel for the petitioner has submitted that the first petition for the grant of regular bail was dismissed as withdrawn on 03.02.2022 on the ground that there were some errors in the petition and in the translation of the FIR and thus, the same was dismissed as withdrawn with liberty to file a fresh one after making the requisite corrections in translation of the FIR. It is further stated that in fact, the present is the first petition for the grant of regular bail.

Brief case of the prosecution is that secret information had been received to the effect that one Canter had been parked near Village Barda and since, there was suspicion that there were some intoxicant substances inside the same, and upon finding the said information to be credible, a police team was formed to conduct the raid. Efforts were made to join witnesses from the public, but people showed their inability to do so and when the police party reached near the Canter, no person was found present near it and thereafter, a notice under Section 42 of the Act of 1985 was prepared and was forwarded to the Duty Magistrate. The Duty Magistrate reached the spot and in his presence, the search of the Canter was conducted. During the search, huge quantity of Ganja i.e., 17 quintals 12 kg and 760 grams was recovered from the said Canter. During the search of cabin of the Canter, one Driving Licence issued in the name of Ravi Kumar son of Om Parkash and one Aadhaar Card also in the name of Ravi Kumar, were recovered and the FIR was registered against unidentified persons. Thereafter, co-accused Ajit, Rohit and Kuldeep were arrested. The present petitioner was also arrested on 24.05.2021.

Learned counsel for the petitioner has relied upon the order dated 15.11.2021 passed in CRM-M-46920-2021 titled as “***Sukhwant Singh Vs. State of Haryana***” vide which the co-accused Sukhwant Singh has been granted regular bail and further reliance has been placed upon the order dated 07.12.2021 passed in CRM-M-50518-2021 titled as '***Naveen Vs. State of Haryana***' and also on the order dated 10.01.2021 passed in CRM-M-54123-2021 titled as '***Sandeep Vs. State of Haryana***' and has submitted that the case of the present petitioner if not better is at

parity with the said persons. It is submitted that the petitioner was working as a salesman at the liquor vend of Ajit and his brother Shrichand has been stated to have been working as Munim in the said liquor vend and the challan in the present case has been presented and there are as many as 28 witnesses, out of which, only one has been examined and thus, the conclusion of trial is likely to take long time, moreso, in view of the COVID-19 pandemic. Learned counsel for the petitioner has argued that the petitioner was not named in the FIR and he has nothing to do with the said occurrence, inasmuch as, he is neither the owner of the Canter nor is alleged to be the driver of the Canter. It is further submitted that no recovery has been effected from the petitioner nor the petitioner can be stated to be in conscious possession of any narcotic substances much less, the narcotic substance that has been allegedly recovered. It is further argued that as per the disclosure statement dated 26.05.2021 (Annexure P-3) of the petitioner, his brother Shree Chand is working as Munim on the liquor vend of Ajit and on 17/18.05.2021 at about 02:00 AM, a phone call was received from Ajit's phone, by the brother of the petitioner i.e., Shree Chand and he said that Ajit was chasing a Canter on a motorcycle and he suspected that there may be liquor in the vehicle or some narcotic substance and so Shree Chand, brother of the petitioner, asked the petitioner to go alongwith him and so they went in a Bolero vehicle and said Shree Chand made a call to Ajit and when they reached Nawan Gaon, then, Ajit had informed him that they had stopped a Canter on the road before the power house of village Barda, where the petitioner along with Shree Chand reached and

saw that Ajit along with other persons were loading bags of Ganja in the pick-up Bolero of Ajit. Thereafter, Ajit, Shree Chand and the petitioner had sat in their Bolero car and the pick-up vehicle following them and the said pick up vehicle was being driven by Rohit and thereafter, at about 1:00. and 1:30 hours, the petitioner came to the liquor vend in the Bolero vehicle along with three boys and dropped these boys there and Ajit went away in the pick-up in which the Ganja was loaded. It is argued that the said statement is the best case against the petitioner and although, there is no connecting link with respect to the same but even if taken on its face value, then also, it is apparent that the petitioner was neither the person who had supplied the said Ganja nor is the person to whom it had to be supplied to and in fact, while the petitioner and the other co-accused, as per the disclosure statement, were chasing the canter, the impression was that it contained liquor. It is further argued that as per the disclosure statement of one Naveen, it is Kuldeep Singh and Lakhmi who had the knowledge that Ganja was coming from Orissa and it was Ravi Kumar who was driving the said Canter and the said Ganja had been stated to have been purchased from the State of Orissa by Lakhmi and Kuldeep Singh. It is further submitted that there is no allegation against the petitioner that he was in conscious possession of the said Ganja nor any recovery of Ganja has been effected from him and thus, reliance has been placed upon an order passed by Coordinate Bench of this Court dated 17.06.2020 in **CRM-M-12051-2020** titled 'Mewa Singh Vs. State of Punjab', and an order of another Coordinate Bench dated 16.07.2021 passed in **CRM-M-12997-2020** titled as 'Daljit Singh Vs. State of

Haryana' to contend that in such like cases if a person has been proceeded against only on the basis of disclosure statement and no recovery has been effected from the petitioner, then he should be granted the benefit of bail. It is also submitted that the petitioner is not involved in any other case.

Learned counsel for the petitioner, in order to overcome the bar under Section 37 of the NDPS Act, has relied upon several judgments. The said judgments have been collated hereinbelow:-

- i) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.965 of 2021 titled as 'Dheeren Kumar Jaina v. Union of India'.
- ii) Judgment of a Co-ordinate Bench titled as 'Ankush Kumar @ Sonu v. State of Punjab', reported as 2018 (4) RCR (Criminal) 84; which was further challenged in the Hon'ble Supreme Court vide SLP (Criminal) Diary No.42609 of 2018 and the same was upheld.
- iii) Judgment of a Co-ordinate Bench in CRM-M-20177-2020 titled as 'Narcotic Control Bureau Vs. Vipin Sood and another' and the same 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.
- iv) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.668 of 2020 titled as 'Amit Singh @ Moni v. Himachal Pradesh'.
- v) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.827 of 2021 titled as 'Mukarram Hussain v. State of Rajasthan and another'.
- vi) Judgment of a Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as 'Ajay Kumar @ Nannu v. State of Punjab'.

Further, reliance has also been placed upon the judgment of a Division Bench of this Court in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as 'Harpal Singh v. National Investigating Agency and another', dated 31.08.2021, wherein the Division Bench was pleased to grant suspension of sentence in a case where the recovery was of commercial quantity. It has been argued that in the said Division Bench judgment, it had been noticed that the grounds for regular bail stand on better footing than for suspension of sentence, which is after conviction.

Notice of motion.

On advance notice, Mr. Manish Dadwal, AAG, Haryana, appears and accepts notice on behalf of the State and stated 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 case of the petitioner is worse than the case of Ravi inasmuch as, said Ravi was not present at the spot whereas, the present petitioner was admittedly present at the spot. It is further submitted that it is apparent from the disclosure statement of the petitioner that he alongwith others have committed a crime and even after he had come to know that there was Ganja in the Canter, still, he did not inform the police. It is however not disputed that no recovery of Ganja has been made from the petitioner and that there is no other case against the petitioner.

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

It is not in dispute that the petitioner was not named in the FIR and even the documents recovered from the Canter in question, are with respect to co-accused Ravi Kumar. The Canter, is neither owned nor was being driven by the petitioner nor it is the case of the prosecution that the petitioner was sitting/present in the Canter. The petitioner is neither stated to be the person who had purchased the Ganja from the State of Orissa nor the person who had sold the same.

As per the disclosure statement of the petitioner, the petitioner, who has an employee of Ajit in his liquor vend, had gone with his brother Shree Chand, who was also working as a *Munim* with Ajit and on account of a phone call received by Shree Chand from Ajit, when the said Ajit was chasing the Canter on a motorcycle because he suspected that there may be liquor in the vehicle or some narcotic substance.

From the said disclosure statement, the best case of the prosecution against the petitioner is that the petitioner being an employee of said Ajit, had taken the Bolero car on the asking of his brother, who was also an employee with Ajit and after a certain point had taken Ajit, his brother in the said Bolero car, which was being followed by the pick-up vehicle in which the Ganja was there and thereafter, the petitioner had returned to the liquor vend, whereas, Ajit taken the pick-up vehicle in which, the Ganja was loaded. Thus, from the disclosure statement, it is apparent that the petitioner was not the person who had purchased the Ganja or to whom it had to be sold to. The petitioner happened to be at the place of the incident on account of a call made by Ajit and it was per chance that they found Ganja in the Canter. No recovery of Ganja has

been made from the petitioner. As per the case of the prosecution, it is Kuldeep Singh and Lakhmi who had the knowledge that Ganja was coming from Orissa and it was Ravi whose documents had been found in the Canter and it was him, who was driving the Canter and had left the same parked. The case of the petitioner cannot be stated to be worse off than that of Ravi and rather, is on a better footing than that of Ravi inasmuch as, Ravi was the person who was knowingly involved in the Canter being its driver, in which the Ganja was being taken whereas, the present petitioner just happened to be there at the time of the incident by chance without having knowledge that there was Ganja in the said Canter. The question whether, in a situation when the petitioner was not even sitting in the Canter in question and was neither the supplier nor the purchaser, the petitioner could be considered to be in the conscious possession of the contraband, is a moot point which has to be decided during the course of the trial. There are as many as 28 witnesses out of which, only one has been examined and thus, the conclusion of the trial is likely to take time, moreso, in view of the COVID-19 pandemic. The case of the present petition is on a similar footing as that of Sandeep, who has been granted regular bail by this Court, vide order dated 10.01.2021 passed in CRM-M-54123-2021.

Learned counsel for the petitioner has also highlighted the fact that in various cases where 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.

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 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 in order to meet the requirement under 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. This Court is of the opinion that in the present case, there are several arguable points which have been raised by the learned counsel for the petitioner and the petitioner has been in custody since 24.05.2021 and all the abovesaid factors are sufficient to entitle the petitioner to the concession of regular bail. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act. 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 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.

February 17, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No