

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM-M-7292-2022
Decided on : 24.02.2022

Subhash

. . . Petitioner

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.78 dated 11.03.2020, under Sections 18 (c) of the NDPS Act, 1985, registered at Police Station, Chandhuth, District Palwal.

The case of the prosecution, in brief, is that a secret information was received by the police officials to the effect that the petitioner along with two other persons, namely, Braham and Ramesh have constructed their house at Jamna Ghat Road and in the vacant space behind their house, they have cultivated fodder (Barsim) and opium illegally and that the said poppy is grown in the plants which can be seen at the spot. Then, on the basis of the said information, the present FIR was registered. It is further the prosecution's case which is

apparent from the statement of Rohtash, Tehsildar recorded under Section 161 Cr.P.C. (Anexure P-2) that the recovery of 78.800 kg. had been made from the petitioner. The alleged recovery had been made from the place which was stated to be behind the house of the petitioner. Learned counsel for the petitioner has submitted that in the present case, even as per the prosecution version, the alleged recovery of 78.800 kg of poppy plants is from khasra No.225//12 and as per the jamabandi of the said khasra number, which has been annexed as Anexure P-1 along with the petition, it is apparent that the same is in the possession of a number of persons, who were all shown as co-sharers in the land along-with the father of the petitioner. A further reference has been made to page 43 of the paper book, wherein, the vernacular of the site-plan prepared by the prosecution has been attached. From the said siteplan, it has been highlighted that the alleged area from where the said poppy plants have been recovered is shown to be at the back of the house of the petitioner and the said field is beyond the constructed area of the same.

It has been argued that at best, the father of the petitioner is the co-owner of the land and even as per the prosecution case, the petitioner has not been arrested at the spot.

It has also been argued that there is nothing on record to show that the petitioner is the one who had sown or cultivated the poppy plants in question. For the said purpose, learned counsel for the petitioner has relied upon a judgment of the Himachal Pradesh High

Court reported as 2019 (4) ILR HP 347, titled as “Sobhram Vs. State of Himachal Pradesh” and also upon a judgment of the Hon’ble Apex Court reported as 2004 (1) RCR (Criminal) 736, titled as “Alakh Ram Vs. State of U.P.”, to contend that even in case, the accused person is a co-owner, then also he cannot be denied bail for alleged recovery of poppy plant from the said land. Learned counsel for the petitioner has submitted that the petitioner was arrested on 21.12.2021 and the challan in the present case has been filed and there are 14 prosecution witnesses out of which none have been examined and the charges have not been framed yet and, thus, the trial is likely to take time and 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:

- Judgment of the Hon’ble Supreme Court in Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina v. Union of India.**
- 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.
- Judgment of a Co-ordinate Bench in CRM-M-20177-2020 titled as **Narcotic Control Bureau v. Vipansood 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.

- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.668 of 2020 titled as **"Amit Singh @ Moni v. Himachal Pradesh."**
- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and another.**
- 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.

Learned State counsel, on the other hand, has submitted that the recovered poppy plant is not a wild growth and, thus, it has to be presumed that the same must have been sown and cultivated.

It is further submitted that since, the said poppy plant was grown immediately at the backside of the house of the petitioner, thus, it cannot be said that it is not grown by the petitioner. Learned State counsel has accordingly opposed the present bail application.

Learned counsel for the petitioner, in rebuttal, has

submitted that the co-accused of the petitioner i.e. Ramesh and Braham have already been granted regular bail vide orders dated 05.10.2021 and 08.02.2022 passed in CRM-M-26558-2021 and CRM-4195-2022 respectively and has submitted that the case of the petitioner is on similar footings as that of Ramesh and Braham.

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

A perusal of the record would show that as per the jamabandi (Anexure P-1) which is with respect to khasra No.225//12, the father of the petitioner along with a large number of other persons is shown to be co-owner of the land. It is not in dispute that the petitioner was not arrested at the spot. Further, the site plan (Annexure P-4) and photographs (Annexure P-3) would show that the poppy plants have been grown at a place which is beyond the constructed area of the petitioner's house.

The High Court of Himachal Pradesh in Sobhram's case (supra) had specifically considered the case for grant of bail where the police had recovered 2000 plants of opium, which were alleged to be illegally cultivated by the petitioner therein, in his fields. The fact that the said land was a joint land of several persons, was considered as a very substantial point in favour of the petitioner therein and bail was granted relying on the said aspect, after considering the provisions of Section 37 of the NDPS Act. Paragraph 3 and 4 of the said judgment are reproduced hereinbelow.

“3. Close scrutiny of the record/status report reveals that FIR No. 51, dated 1.5.2018 under S.18 of the Narcotic Drugs & Psychotropic Substances Act, came to be lodged against the bail petitioner at Police Station Padhar, Mandi, on the basis of a secret information received by the Police to the effect that the bail petitioner is involved in illegal cultivation of prohibited substance i.e. Opium. Allegedly, the Police recovered 2000 plants of Opium illegally cultivated by the bail petitioner in his fields. As per record, Police, after having drawn samples, destroyed the illegal cultivation of Poppy plants, however, report of the FSL clearly suggests that the plants allegedly confiscated by the investigating agency are samples of Poppy plants and fall within the definition of prohibited substance as defined under the Act ibid.

4. Considering the fact that the land, whereupon cultivation of Opium and Poppy plants was being allegedly done, is a joint land and in possession of many persons coupled with the fact that guilt, if any, of the bail petitioner is yet to be proved in accordance with law by the prosecution by leading cogent and convincing evidence, this court finds no reason to keep the bail petitioner behind the bars during trial. Moreover, rigorous of S.37 of the Act ibid are not applicable in the facts and circumstances of the present case, as such, prayer for grant of bail, especially in the offence allegedly committed under S.18 of the Act ibid, deserves to be accepted at this stage.”

The Hon’ble Apex Court in Alakh Ram’s case (supra) had also observed that it has to be proved that merely the petitioner had cultivated the prohibited plant and it is not enough that plants were found in the property of the accused. The fact that the appellant therein

and his father and brothers owned 70 bighas of land was also taken into consideration and the fact that there was nothing to show that the said land was owned exclusively by the appellant therein was also considered and in view of the same, the appellant therein was acquitted. The said judgment has been followed by the Madhya Pradesh High Court in **Ramesh Vs. The State of Madhya Pradesh, reported as 2011 (25) R.C.R. (Criminal) 464**. The above-said point, thus, is a very debatable issue and would be considered during the course of trial, to the effect as to whether the petitioner can be held liable for recovery of poppy plants from land, which is jointly owned by several persons. Admittedly, in the present case, the petitioner has been in custody since 21.12.2021 and the challan in the present case has already been presented and there are 14 witnesses, out of which none have been examined and since the charges have not been framed even now, thus, the trial is likely to take long time, moreso, in view of the present COVID-19 pandemic. The petitioner is also not involved in any other case and the said fact weighs in favour of the petitioner. Co-accused of the petitioner i.e. Ramesh and Braham have already been granted regular bail by this Court vide orders dated 05.10.2021 and 08.02.2022 respectively.

Learned counsel for the petitioner has also highlighted the fact that in various cases 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 Coordinate 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 Singhv. 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. This Court feels 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 21.12.2021 and the same is sufficient to entitle the petitioner for grant 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 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.

(VIKAS BAHL)
JUDGE

February 24th, 2022

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No