

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

**212**

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**CRM-M No. 11431 of 2022  
Date of decision : 23.5.2022**

**Meeta Khan**

**.....Petitioner**

**Vs.**

**State of Punjab**

**.....Respondent**

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present : Mr. N.S. Sidhu, Advocate, for the petitioner

Mr. Sarabjit Singh Cheema, AAG, Punjab

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**VIKAS BAHL, J. (Oral)**

This second petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 26 dated 17.6.2021 under Sections 15/25/61/85 of the NDPS Act, 1985, registered at Police Station Mehal Kalan,, District Barnala.

Learned counsel for the petitioner has submitted that in the present case, the recovery from the present petitioner and co-accused Jasveer Singh @ Jassi was of 26 Kgs. of poppy husk each i.e. total 52 Kgs. and co-accused of the petitioner was granted regular bail by this Court in CRM-M No. 36677 of 2021 on 7.3.2022 after considering his detailed submissions and the case of the petitioner is on a similar footing as that of the said co-accused. Learned counsel has submitted that the petitioner is in custody since 16.6.2021 and none of the prosecution witnesses have been examined till date. It is submitted that the petitioner had withdrawn his earlier bail application on 25.10.2021 and even thereafter, six months and 28 days have gone by and the trial has not

made any progress inasmuch as no witness has been examined till date.

Learned State counsel, on the other hand, has opposed the present application for regular bail and has submitted that the recovery from both the petitioners taken together is of 52 Kgs. of poppy husk and thus, the same falls under commercial quantity inasmuch as, stipulated commercial quantity starts from 50 Kgs. (poppy husk). It is submitted that the petitioner is involved in three other cases.

Learned counsel for the petitioner in rebuttal has relied upon the judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as Maulana Mohd. Amir Rashadi Vs. State of U.P. and others 2012 (2) SCC 382 reference has been made to the relevant portion of paragraph 6 which 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 record.

The recovery effected from the petitioner along with co-accused Jasveer Singh @ Jassi is that of 26 Kgs. of poppy husk each i.e. a total of 52 Kgs., which is slightly more than 50 Kgs., which is the stipulated commercial quantity. This Court vide order dated 7.3.2022 passed in CRM-M No. 36677 of 2021, had granted regular bail to Jasveer Singh @ Jassi after considering the detailed arguments raised by the counsel for Jasveer Singh in which, even an argument pertaining to false implication had been raised. The said order is

reproduced as under :

*“Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated in the case CRM-M-36677-2021 (O&M) inasmuch as a perusal of the FIR would show that it had been alleged that a Secret Informer had given secret information at 11:00 pm to the effect that the petitioner, alongwith another person, was selling poppy husk and, thereafter, the recovery of 52 kg of poppy husk each from the petitioner and co-accused was effected . It is further submitted that the said version in the FIR is false inasmuch as the present petitioner was forcibly taken from his house at around 04:30 pm on 16.06.2021 by respondent No.4 (SHO Amrik Singh) alongwith SI Satnam Singh, ASI Jarnail Singh, ASI Gursimranjit Singh, ASI Kiranjit Singh, HC Gurpreet Singh and PHC Sheer Singh. It is argued that the said police officials had entered the house of the petitioner without any search or arrest warrants and after having taken the petitioner in custody had thereafter, sought money from the father of the petitioner and subsequently, falsely implicated the present petitioner. It is further argued that the Village Panchayat had installed the CCTV cameras in the village covering the entire village and the said illegal action of the police was duly recorded in CCTV camera and the video regarding the same in the form of a “Compact Disc” has also been attached as Annexure P-2, alongwith the present petition. It is contended that in the present case, the alleged recovery effected from the present petitioner is of 26 kg of poppy husk and if taken together from both i.e. petitioner and co-accused, a total of 52 kg of poppy husk has been recovered, which is only marginally higher than the commercial quantity i.e. 50 kg. It is further contended that the petitioner has been in custody since 16.06.2021 and there are as many as 15 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of the trial is likely to take time moreso, in view of the present COVID-19 pandemic. It is also submitted that all the prosecution witnesses are police officials and thus, the question of influencing them, does not arise.”*

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

*As per the FIR, the Secret Informer had given a secret information to the police officials at 11:00 pm and it is thereafter that*

*the alleged recovery of 26 kg of poppy husk each from the petitioner and the co-accused (total 52 kg of poppy husk) was effected.*

*It is the case of the petitioner that the petitioner was in fact, taken forcibly from his house on 16.07.2021 at around 04:30 pm by respondent No.4 (SHO Amrik Singh) alongwith SI Satnam Singh, ASI Jarnail Singh, ASI Gursimranjit Singh, ASI Kiranjit Singh, HC Gurpreet Singh and PHC Sheer Singh, who had forcibly entered the house of the petitioner without any search or arrest warrants and the petitioner has been falsely implicated in the present case and with respect to the same, there is a video footage which had been recorded in the CCTV camera installed by the Village Panchayat. The question as to whether the petitioner has been falsely implicated or not and authenticity of the said video footage, would be considered during the course of trial. The petitioner is stated to be in custody since 16.06.2021 and even the recovery which has been effected from the petitioner and co-accused is 52 kg of poppy husk, which is marginally higher than the commercial quantity, and in the present case, challan has already been presented and there are 15 prosecution witnesses, out of which, none have been examined 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 said 15 prosecution witnesses are stated to be police officials. The petitioner has been acquitted in all the four other cases, in which, he was made as an accused.*

*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 others** 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. This Court feels that in the present case, there are arguable points involved in the case and even the custody of the present petitioner is substantial."*

The case of the present petitioner is on parity with the case of the co-accused Jasveer Singh and the petitioner has undergone an additional custody of 2 months and 17 days. The earlier bail application of the petitioner was withdrawn on 25.10.2021 and thereafter 6 months and 28 days have gone by and till date no witness has been examined out of the 15 prosecution witnesses and the trial has not made any progress, and thus, the petitioner is entitled to file the present second bail application. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

Keeping in view the abovesaid facts and circumstances, moreso, in view of the law laid down in Maulana's (supra) case, 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 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**

**23.5.2022**

*Ashwani*

|                   |   |        |
|-------------------|---|--------|
| Speaking/Reasoned | : | Yes/No |
| Reportable        | : | Yes/No |