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

CRM-M-11462-2022

Date of decision : 22.11.2022

Hira Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. A.S. Brar, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.32 dated 22.04.2021 registered under Section 22 of the NDPS Act, 1985 at Police Station Smalsar, District Moga.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 22.04.2021 and investigation is complete and challan has been presented and there are 13 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time. It is further submitted that the petitioner is not involved in any other case under the NDPS Act. It is argued by the learned counsel for the petitioner that there are arguable points in the present case including

the point that the recovery had not been effected from the present petitioner inasmuch as, it has been stated in the FIR that the petitioner had thrown the polythene bag of black colour on the ground from which the vials/bottles containing intoxicant substance were recovered. It is further argued that even as per the case of the prosecution, the said polythene bag was picked up from the ground and in such a situation, it cannot be said that the recovery was effected from the conscious possession of the present petitioner. In support of his arguments, learned counsel for the petitioner has relied upon a decision of a Coordinate Bench of this Court in **CRM-M-16150-2021 dated 19.07.2021 titled as 'Balwinder Singh v. State of Punjab'**, and on judgment in **CRM-M-33733-2020 dated 15.03.2021 titled as 'Manjet Singh v. State of Punjab'** alongwith connected matters', to contend that in such a situation, it is matter of debate as to whether the petitioner could be stated to be in conscious possession of the narcotic substance in question or not. It is further contended that the petitioner had earlier filed petition for grant of regular bail which was dismissed as withdrawn on 07.10.2021 and even thereafter, a period of more than 1 year and 1 month has elapsed and yet no witness has been examined and the trial has not made much progress, thus, entitling the petitioner to file the present second petition for grant of regular bail.

Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that in the present case, the recovery had been effected from the conscious possession of the petitioner, inasmuch as, the police officials had seen the petitioner throwing the polythene bag on the ground and the recovery had

been effected from the same and thus, it cannot be said that the petitioner was not in conscious possession of the said polythene bag, which contained the intoxicant substance. It is also submitted that the recovery from the said polythene bag is of commercial quantity, thus, the bar under Section 37 of the NDPS Act would apply. The custody period of the petitioner and the fact that he is not involved in any other case under the NDPS Act, has not been disputed by learned State counsel.

This Court has heard learned counsel for the parties and has gone through the paper-book.

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 petitioneer 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.

xxx xxx xxx

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 v. State of Punjab' decided on 06.07.2020, CRM-M-14474-2020 titled as 'Dharminder Singh v. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar v. State of Punjab' decided on 11.08.2020, CRMM-6433-2018 titled as 'Pawan Kumar v. State of Punjab' decided on 23.02.2018 and CRM-M-16380-2020 titled as 'Buta Singh v. 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 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 v. 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 conession 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 be filed in this regard.”

A perusal of the above judgment would show that although in the said case also, the recovery effected was of commercial quantity but, since the recovery of the polythene bag therein was also after the same had been thrown on the ground, thus, it was observed that it was a debatable issue whether the petitioner could be said to be in conscious possession of the narcotic or not. It was also observed that the rigors of Section 37(1) (B) of the NDPS stood satisfied by due implication.

Even in Manjit Singh's (supra) case, a Coordinate Bench of this Court dealt with a 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 effected was made from the conscious possession of the petitioner therein or not. The said case was also a case of commercial quantity.

With respect to Section 37 of NDPS Act, it would be relevant to note that in 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 16.08.2021** 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 @ Nanu 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 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 the 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) RCR (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.

In the present case, the petitioner is in custody since 22.04.2021 and the investigation is complete and challan has been presented and out of 13 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case under the NDPS Act. Moreover, a perusal of the FIR would show that as per the prosecution case, the petitioner had thrown the black polythene bag on the ground on seeing the police party, thus, in view of the judgments cited by learned counsel for the petitioner, it would be a matter of debate as to whether the petitioner could be stated to have been in conscious possession of the alleged contraband or not and the same would be finally adjudicated during the course of the trial Court and the same raises a strong prima facie argument in favour of the petitioner. 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 as well as law laid in the aforementioned cited cases, 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 him not being required in any other case. The petitioner shall

abide by the following conditions:

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner not pressurize/intimidate the prosecution witnesses(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, it is made clear that in case, any act is done by the petitionere to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an 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.

22.11.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No