

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

**CRM-M No.13895 of 2022 (O&M)
Decided on: 29.11.2022**

Darshan Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. L.S. Sekhon, Advocate
for the petitioner.

Mr. Navneet Singh, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.145 dated 11.10.2020 registered under Sections 15, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') at Police Station Dhanaula, District Barnala.

Counsel for the petitioner, at the very outset, has relied upon the order dated 22.11.2022 passed in CRM-M Nos.19115 and 6825 of 2022 and CRM-M No.34120 of 2021, vide which the co-accused of the petitioner namely Gurpreet Singh, Jaspal Singh @ Pali and Veerdavinder Singh, were granted the concession of regular bail.

The operative part of the said order, reads as under:-

“Counsel for the petitioner(s) appearing on behalf of Gurpreet Singh and Veerdavinder Singh, have argued that the new ground for filing the petitions i.e. CRM-M

No.19115 and 6825 of 2022, is that the petitioner Gurpreet Singh is in custody for the last 01 year, 08 months and 24 days and the petitioner Veerdavinder Singh, is in custody for the last 02 years, 01 month and 07 days and no prosecution witness has been examined, so far.

Brief facts of the case are that the FIR was registered on the basis of a secret information that Veerdavinder Singh, Jaspal Singh @ Pali and Darshan Singh, are bringing Poppy Husk from the other State as they are in the habit of selling the same and will be coming on a truck bearing No.PB13-AL-4331. On receiving the secret information, the FIR was registered and a raiding party was constituted. It is stated that the police party headed by SI Kuldeep Singh, SHO, Police Station Dhanaula, reached at the spot and found that a truck is parked near the gate of a Temple and 03 persons were standing nearby. On seeing the police party, 02 of them entered in the truck and the 3rd one entered into the Innova car. Thereafter, on the basis of suspicion, they were apprehended and disclosed their names. They were, thereafter, also given option to be searched before a Gazetted Officer or a Magistrate and after recording their non-consent memo, Deputy Superintendent of Police Lakhbir Singh was called at the spot and in his presence, the search was conducted. It is also stated that from the search of the aforesaid truck, 03 plastic bags containing Poppy Husk was recovered, weighing 32 Kgs each i.e. 96 Kgs. total and similarly, 02 bags, weighing 32 Kgs i.e. total 64 Kgs were recovered along with the drug money of Rs.1.70 lacs from the dashboard of the car.

Counsel for the petitioner on behalf of Gurpreet Singh, has submitted that the petitioner Gurpreet Singh is neither named in the disclosure statement nor was found at the spot and he has been nominated later on, on account of

being the registered owner of the aforesaid truck. It is also submitted that the petitioner Gurpreet Singh is in custody for the last 01 year, 08 months and 24 days and the petitioner Veerdavinder Singh, is in custody for the last 02 years, 01 month and 07 days and similarly, the petitioner Jaspal Singh @ Pali, is in custody for the last 02 years, 01 month and 07 days and till date, no PW has been examined; the petitioners Jaspal Singh @ Pali and Veerdavinder Singh are the first offenders and it will take some time in conclusion of the trial and therefore, the custodial interrogation of the petitioners is not required.

*Counsel for the petitioner(s) have relied upon the order dated 19.09.2022 passed by the Co-ordinate Bench of this Court, in CRM-M No.24006 of 2022, titled as “**Sukhwinder Singh vs State of Punjab**”, wherein the following observation has been made:-*

*“Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity has been effected, the Supreme Court as well as this Court have 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 vs. 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 vs. State of Punjab reported as 2018 (4) RCR (Criminal) 84, had considered the provision of Section 37 of the Act of 1985 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 vs. 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 vs. 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 vs. 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 vs. State of Punjab and other connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the Act of 1985, 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; reported as (2021) 5 SCC***

724 was also taken into account and the provisions of Section 37 of the Act of 1985 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.”

Counsel for the State, on instructions from the Investigating Officer, has not disputed the factual position but opposed the prayer for bail on the ground that the petitioner Gurpreet Singh is involved in one more FIR registered under the NDPS Act, though the recovery effected in the said FIR is of small quantity, which is pending before the Judicial Magistrate Ist Class.

Without commenting anything on merits of the case, considering the fact that the petitioner Gurpreet Singh is in custody for the last 01 year, 08 months and 24 days; the petitioner Veerdavinder Singh, is in custody for the last 02 years, 01 month and 07 days; the petitioner Jaspal Singh @ Pali, is in custody for the last 02 years, 01 month and 07 days; no PW has been examined so far; the petitioners Jaspal Singh @ Pali and Veerdavinder Singh are the first offenders; the custodial interrogation of all the petitioners is not required and it will take some time in conclusion of

the trial, all these petitions are allowed and the petitioners namely Gurpreet Singh, Jaspal Singh @ Pali and Veerdavinder Singh are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.”

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has argued that the petitioner was granted interim bail from 10.11.2021 till 09.02.2022, and after availing the same for a period of 03 months, he surrendered back and has not misused the concession of bail. It is further submitted that the petitioner is in custody for the last 01 year, 11 months and 01 day, though, he is involved in some other cases wherein he has been convicted for possessing small quantity of narcotics and has been sentenced to undergo less than 04 months of the custody in all the other FIRs. Lastly, it is submitted that out of 16 PWs, only 01 PW has been examined and it will take some time in conclusion of the trial.

Counsel for the State has filed the Custody Certificate, which reflect that apart from this case, the petitioner stands convicted in 03 more FIRs under the NDPS Act, in which the maximum punishment is for a period of 04 months.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01 year, 11 months and 01 day; the co-accused of the petitioner are already released on bail; the custodial interrogation of the petitioner is not required; out of 16 PWs, only 01 PW has been examined and the conclusion of the trial will take some time, this petition is allowed and

the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

29.11.2022
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No