

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-15807-2022(O&M)

Date of decision : 30.05.2022

Vikram alias Bikar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Amit Choudhary, Advocate
for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

CRM-14952-2022

Allowed as prayed for.

Annexure P-16 is taken on record, subject to all just exceptions.

CRM-19318-2022

Allowed as prayed for.

Annexures P-17 to P-20 are taken on record, subject to all just
exceptions.

CRM-M-15807-2022

This is a third petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.267 dated 14.06.2021 registered under Sections 21(b) and 27-A of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) and Section 51(b) of the Disaster Management Act, 2005 at Police Station City Fatehabad, District Fatehabad.

present case the alleged recovery from the petitioner is 40 grams of heroin which is non commercial quantity as the stipulated commercial quantity of heroin starts from 250 grams. It has also been submitted that as per the FIR, the said contraband was recovered from a transparent polythene bag. Learned counsel for the petitioner has relied upon various orders passed by coordinate Benches of this Court i.e. order dated 02.08.2021 passed in **CRM-M-4408-2021** titled as **“Banti Kaur @ Bhanti Kaur Vs. State of Punjab, Jaskaran Singh @ Jassu Vs. State of Punjab**, reported as **2021(2) RCR (Criminal) 837, Binder Kaur @ Goga Vs. State of Punjab** reported as **2021(3) RCR (Criminal) 360**, and order dated 28.02.2020 passed in **CRM-M-8026-2020** titled as **Lakhwinder Singh @ Lakha Vs. State of Punjab** to contend that it is highly unlikely that a person who has to carry contraband, would carry the same in a transparent polythene bag. It has further been submitted that the petitioner has been in custody since 14.06.2021 and the challan in the present case has already been presented but till date no witness has been examined. It has been stated that the second bail application was withdrawn on 03.02.2022 at that stage and even after the said period, no witness has been examined till date.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the petitioner is involved in other cases also.

Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in **“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”**, reported as **2012 (2) SCC 382** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot

be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment 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 the arguments of learned counsel for the parties and has perused the paper book.

The Coordinate Bench of this Court in ***Banti Kaur @ Bhanti Kaur's*** case (supra) has held as under:-

“1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against her vide FIR No.191, dated 8.10.2020, Police Station Cantt Bathinda, District Bathinda, under Section 22 of NDPS Act, wherein it is alleged that the petitioner was caught red-handed while carrying a transparent plastic polythene bag which was found to contain 1000 tablets of ‘Clovidol’.

2. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the instant case and that she has an unblemished record and is not involved in any other case and it is highly unlikely that any person who is carrying contraband would carry the same in a transparent bag so as to invite attention, including that the police.

3. Opposing the petition, learned State counsel has not disputed the fact that the contraband is alleged to have been carried in a transparent plastic polythene bag. He has however, submitted that the weight of the total recovered contraband works out to 410 grams of ‘Tramadol’ which would fall within the category of ‘commercial quantity’. Learned State counsel has however, informed that the petitioner is not involved in any other case and has presently been behind bars since the last about 9 months and 17 days.

4. *I have considered rival submissions addressed before this Court.*

5. *It is not disputed that the contraband was alleged to have been carried by the petitioner in a transparent polythene bag. It is certainly highly unlikely that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. Carrying contraband in a transparent polythene bag making it clearly visible to others would surely invite attention of everybody who passes by. In these circumstances the case of the prosecution is rather rendered suspect particularly in view of the fact that the petitioner is not even stated to be a previous convict and is a lady who has been behind bars since the last about 9 months. In view of the aforesaid discussion particularly the fact that the petitioner is a lady and is not even a previous convict, the petition is accepted and the petitioner is ordered to be released on bail subject to her furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.*

2.8.2021

(GURVINDER SINGH GILL)
JUDGE”

A perusal of the said judgment would show that although, in the said case, recovery was of commercial quantity but it was found that since recovery was effected from a transparent polythene bag, the same made the case of the prosecution doubtful and it was observed therein that as it was highly unlikely that a person who is committing an offence with respect to the contraband, would carry the contraband in a transparent polythene bag.

The Coordinate Bench in ***Jaskaran Singh @ Jassu's*** case (supra), after considering several judgments on the same issue, had also granted the concession of regular bail to the petitioner in that case. Relevant portion of the judgment is reproduced as under:-

“xxx xxx

Lakha vs. State of Punjab (CRM-M No.8026 of 2020) and of Coordinate Benches in Binder Kaur alias Goga vs. State of Punjab (CRM-M No.4584 of 2020) and Mandir Singh vs. State of Punjab (CRM-M No.8035 of 2019) to contend that a person engaged in the trade of contraband would never be expected to carry the same in any transparent bag which would be visible to the naked eyes.

3. Per contra, the bail application is opposed on behalf of the State by contending that the recovery of commercial quantity of contraband was made from the car of the petitioner himself.

4. Be that as it may, without prejudice to the merits of the submission raised on behalf of the petitioner, but considering that he is admittedly not involved in any other case under the NDPS Act, and also considering that he has remained in detention well above 05 months since 14.12.2019, at this stage, the petitioner may be released on regular bail to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned subject to imposition of appropriate terms and conditions.

xxx xxx”

The Coordinate Bench of this Court in ***Binder Kaur @ Goga's***

case (supra), had held as under:-

“xxx xxx

2. Learned counsel for the petitioner has vehemently argued that in the present case the petitioner has been falsely implicated. He has further stated that the petitioner is a young lady of 38 years of age, having a family and has good antecedents. He has further stated that there is no past history of the petitioner and she is not involved in any other case till date. He has further contends that even as per the allegations contained in the FIR, the petitioner was carrying 1000 tablets containing Tramadol Hydrochloride salt in her hand, which was in a transparent polythene bag. Learned counsel states that the story put forward by the police is ex facie concocted because in case any person wishes to do the trading or to carry the contraband then it would never be put in a transparent bag. He has further pointed out that in the FIR it has been repeatedly recorded that bag was transparent in nature. He has further submitted that the petitioner is in custody since 08.11.2019.

xxx xxx

4. Learned State counsel has filed the custody certificate of the petitioner by way of affidavit of Rajdeep Singh Brar, Deputy

Superintendent, Central Prison, Faridkot. Same is taken on record. As per the custody certificate the petitioner is in custody for a period of 02 months and 27 days and there is no other case against her. He further submits that after completion of investigation and presentation of challan, the charges have also been framed by the trial Court.

xxx xxx

6. At the time of deciding bail application there are various relevant factors, which can be taken into consideration. Prima facie probability of influencing witnesses is one of the element factor and also as to whether the petitioner is particularly involved in any other case is also a relevant factor. It is also relevant in any case for deciding the bail application as to what is the stage of the case. In the present case the investigation is already over and the petitioner is in custody for about three months and this Court while deciding the bail application would not go into the merits of the case. Nothing is apparent to show that petitioner may influence the witnesses. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court.

xxx xxx”

A perusal of the above judgment would show that in fact, bail was granted on the said point in a case where the accused was in custody only for a period of three months. Similarly, in **Lakhwinder Singh @ Lakha's** case (supra), the Coordinate Bench of this Court had held as under:-

“xxx xxx

2. Ld. Counsel for the Petitioner relies on a decision of a Coordinate Bench of this Court in 'CRM-M No.4584 of 2020 - Binder Kaur alias Goga vs. State of Punjab', to contend that it is unbelievable that a person engaged in the business of Drug Smuggling, will carry the contraband in a transparent Bag. The applicant, in the aforesaid case, in the given circumstances, considering that she was not involved in any other case under the

NDPS Act and challan against her had already been submitted, was therefore released on bail by the Bench after she had remained in detention for 02 months and 27 days.

3. The detention undergone by the present Petitioner is much more being 08 months, and he is also not stated to be involved in any other case under the NDPS Act.

4. Challan against the Petitioner has already been submitted and the trial is still pending.

5. As such, considering the long detention already undergone by the present Petitioner and without commenting on other merits of the case, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court concerned.

6. Disposed off.”

The above said aspect also raises a debatable issue and thus, there are arguable points in the present case. The alleged recovery in the present case is of 40 grams of heroin which is non commercial quantity as the stipulated commercial quantity starts from 250 grams of heroin. The petitioner has been in custody since 14.06.2021 and no witness has been examined as yet and even since 03.02.2022, when the petitioner had withdrawn the second bail petition, no progress has been made in the trial and no witness has been examined and even the charges have not been framed as yet.

Keeping in view the above said facts and circumstances, 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.

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 petition.

May 30, 2022
Davinder Kumar

(VIKAS BAHL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No