

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(210)

CRM-M-15971-2022

Date of decision: - 13.05.2022

Akashdeep Singh @ Akash

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Harchand Singh Batth, Advocate,
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a first bail application under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.140 dated 29.09.2021, registered under Section 21(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Sadar Patti, District Tarn Taran.

Learned counsel for the petitioner has submitted that in the present case, there is a violation of the Section 50 of the NDPS Act, inasmuch as, perusal of the consent memo would show that the SI Lakhbir Singh (SHO) of the Police Station Sadar Patti while giving the option to the petitioner, in addition to the right of the petitioner to be searched by a gazetted officer or by an Illaqa Magistrate, had given a

third option of his being searched by SI Lakhbir Singh himself. It is further submitted that in the present petition, on the consent memo, which is supposed to be prepared prior to the registration of the FIR, the FIR number itself had been mentioned and has referred to the vernacular of the said consent memo (page 29 of the paperbook), in which, FIR No.140 with all the details of the FIR is also present and has been typed with the same font as the entire body of the consent memo. Learned counsel for the petitioner has further submitted that the petitioner is not involved in any other case and the challan has already been presented and there are 10 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery in the present case is of 345 grams of Heroin and the same is commercial quantity, thus, the petitioner does not deserve the concession of regular bail.

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

Perusal of the record would show that in the present case, the FIR No.140 and other details have been mentioned in the consent memo as well as in the other documents. A perusal of the vernacular of the consent memo (page 29 of the paperbook) would also show that the FIR number has been mentioned in the consent memo and has been typed with the same font as rest of the body of the consent memo.

A Division Bench of this Court in "*Didar Singh @ Dara Vs.*

The State of Punjab", reported as 2010 (3) RCR (Criminal) 337, has held as under: -

"29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In Ajay Malik & Ors. v. State of U.T. Chandigarh, 2009(3) RCR (Crl.) 649, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e. either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.

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32. In view of the aforesaid discussion, the appeal is order of sentence passed by the Judge, Special Court, Amritsar are set aside. The appellant, who is in custody, be set at liberty forthwith if not required in any other case.

Perusal of the above would show that it has been observed that in case the documents prepared at the time of taking consent etc., which were prepared prior to the registration of the FIR, bear the number of the FIR, which could not have been available at the time of entry of the consent memo, then, only two inferences could be drawn from such a situation, i.e., either the FIR was registered prior to the said consent memo or the number of the FIR has been inserted in the said document

after its registration and both situations, it seriously reflects upon the integrity of the prosecution version.

From the above, it is apparent that the petitioner has arguable points in his favour, which would be finally decided during the course of trial. The petitioner is stated to be in custody since 29.09.2021 and he is not involved in any other case and the challan has already been presented and there are 10 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time.

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, 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: -

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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 16.8.2021 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 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.

Keeping in view the fact that there are several arguable points in the present petition, *inter alia*, the identification of the petitioner and also the question whether the petitioner could be stated to be in conscious possession of the narcotic drug when he was not even

apprehended at the spot and also keeping in view the period of custody of the petitioner and also the law laid down in the above-said judgments and all the other factors, are sufficient to entitle the petitioner for the concession 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 directed to be released on regular 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 Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

May 13, 2022
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes