

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

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Date of decision : 11.05.2022

1.

CRM-M-18642-2021

Ravdeep Singh @ Sheru

... Petitioner

Versus

State of Punjab

... Respondent

2.

CRM-M-17048-2022

Rakesh Sharma

... Petitioner

Versus

State of Punjab

... Respondent

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

Present : Mr.Munish Puri, Advocate  
for the petitioner in CRM-M-18642-2021.

Mr.A.P.S. Tung, Advocate  
for the petitioner in CRM-M-17048-2022.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

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

This order will dispose of two criminal miscellaneous petitions  
filed under Section 439 Cr.P.C. for grant of regular bail pending trial to the  
petitioners in FIR no.160 dated 18.09.2020 registered under Sections 21 and  
22 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short

“NDPS Act”) at Police Station Division no.1, District Pathankot.

The first petition, i.e. CRM-M-18642-2021 titled as “Ravdeep Singh @ Sheru vs. State of Punjab” has been filed by Ravdeep Singh @ Sheru and the second petition, i.e. CRM-M-17048-2022 titled as “Rakesh Sharma vs. State of Punjab” has been filed by Rakesh Kumar Sharma.

Learned counsel for both the petitioners have jointly submitted that in the present case, the petitioners have been falsely implicated and both the petitioners are not involved in any other case and they have been in custody since 18.09.2020 and out of 26 prosecution witnesses, only 1 witness is partially examined and thus, the trial is likely to take time. It is further submitted that the father of Ravdeep Singh @ Sheru, i.e. Santokh Singh is the owner of 13 marlas of land in front of New Judicial Court Complex, near Chhoti Nehar, Pathankot which has been given on rent to M/s Natraj Pharma, Sonalika. Reference has been made to the copy of the jamabandi for the year 2006-07 (Annexure P-2). It is further submitted that said Natraj Pharma had placed an order on 10.09.2020 of 6 boxes of Codetis cough Syrup and the same was to come through Gati Courier Services having its office at opposite New Judicial Court Complex and in order to prima-facie substantiate the same, bill dated 09.09.2020 (Annexure P-3) has been annexed. It is further submitted that there is one Jugal Kishore who is running the aforesaid M/s Natraj Pharma and on the evening of 17.09.2020, a team headed by Inspector Balwinder Singh of Police Station Sadar had conducted a raid at around 5:00 PM at Gati Courier Services having its office-cum-godown opposite New Judicial Court Complex, near Chhoti Nehar Pathankot and in the said raid, contraband in question had been recovered and the same has been videographed in the CCTV camera of Gati

Courier Services and it is the said Gati Courier Services who had provided the aforesaid bill and since the courier was meant for M/s Natraj Pharma which is in the premises owned by father of Ravdeep Singh @ Sheru, thus, the police also came to the premises of father of Ravdeep Singh @ Sheru at 6:00 PM and under suspicion, arrested him, whereas the contraband belongs to M/s Natraj Pharma run by Jugal Kishore as a tenant. Reliance has been placed on the DVD (Annexure P-4) in said regard. It is also submitted that the said assertions are prima-facie proved from the fact that no other FIR has been lodged in Pathankot on 17/18.09.2020 pertaining to the alleged contraband recovered at Gati Courier Services. It is, thus, jointly submitted that in the present case, recovery was not effected from the place where the recovery had been shown to have been effected. It is stated by learned counsel appearing for petitioner Rakesh Sharma that petitioner Rakesh Sharma has a certificate of registration from the Punjab State Pharmacy Council which was issued on 24.02.1995 and is valid upto 31.12.2024 and thus, was valid on the date when the alleged recovery had been effected. On the basis of said assertion, it is stated that the petitioners deserve the concession of regular bail moreso, keeping in view the custody period of the petitioners.

Learned State counsel, on the other hand, has opposed the present petitions for regular bail and has submitted that the pleas raised by learned counsel for the petitioners are defence pleas and perusal of the FIR would show that the recovery of commercial quantity of intoxicant/ drugs had been effected from the present petitioners on 18.09.2020. The fact that the petitioners are not involved in any other case and also the period of the custody has, however, not been disputed.

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

The petitioners have been in custody since 18.09.2020 and in the present case, challan has already been presented and out of 26 prosecution witnesses, only one witness has been partially examined and thus, the trial is likely to take time. The petitioners are not involved in any other case. It is the case of the petitioners that the recovery had not been effected on 18.09.2020 from the place as shown in the FIR, but had been effected on 17.09.2020 at 5:00 PM from Gati Courier Services which has its office-cum-godown at opposite New Judicial Court Complex, New Chhoti Nehar, Pathankot and the said aspect has been videographed and the CCTV camera which is installed at Gati Courier Services could prima facie prove the said fact. It is further the case of the petitioners that the parcel in question, found at Gati Courier Services was ordered by M/s Natraj Pharma, as is apparent from the bill dated 09.09.2020 (Annexure P-3) and it was the said Natraj Pharama, which is run by co-accused Jugal Kishore, who is a tenant in the premises owned by the father of Ravdeep Singh @ Sheru, by whom the order had been placed and it is on account of the said fact that the police, after considering that the said parcel which had come to Gati Courier Services was meant for M/s Natraj Pharma, had come to the premises owned by father of the petitioner Ravdeep Singh @ Sheru and had arrested him there and no incident had even taken place on 18.09.2020 as has been stated in the FIR. The petitioners have even annexed the DVD having the said CCTV footage. It is also stated that on 17/18.09.2020, no FIR in Pathankot was registered with respect to the alleged contraband. The said aspects have been disputed by learned State counsel. However, a perusal of

the facts as have been narrated by the learned counsel for the petitioners would show that it would be a matter of debate during the course of the trial as to whether the alleged recovery had been effected as has been alleged in the FIR or it had been effected a day prior, i.e. on 17.09.2020 from the premises of Gati Courier Services and as to whether or not the said parcel was meant for M/s Natraj Pharma, who is a tenant in the premises of father of Ravdeep Singh @ Sheru and the said questions would be finally adjudicated during the course of trial.

Learned counsel for the petitioners 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:

“ 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 16.8.2021 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 vs. National Investigating Agency and another”***, granted suspension of sentence in a case where the recovery was of commercial quantity. In the above mentioned 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 NDPS Act were considered and the sentence of

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*** reported as ***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 is of the opinion that in the present case, there are several arguable points which have been raised by the learned counsel for the petitioner and the petitioners have been in custody since 18.09.2020 and all the abovesaid factors are sufficient to entitle the petitioners 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.

Keeping in view the above said debatable issue as well as the fact that the petitioners have been in custody since 18.09.2020 (more than 1 year and 8 months) and 25 prosecution witnesses are yet to be examined and thus, the trial is likely to take time and all the witnesses are official witnesses and thus, the question of influencing them does not arise and the petitioners are not involved in any other case, both the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail / surety bonds to the satisfaction of the concerned trial

Court/ Duty Magistrate and subject to them not being required in any other case. The petitioners shall also abide by the following conditions:-

1. The petitioners will not tamper with the evidence during the trial.
2. The petitioners will not pressurize / intimidate the prosecution witness(s).
3. The petitioners will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioners shall not commit an offence similar to the offence of which they are accused of, or for commission of which they are suspected.
5. The petitioners 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 them 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.

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 petition.

**(VIKAS BAHL)**  
**JUDGE**

**May 11, 2022**

*Davinder Kumar*