

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

**CRM-M No.18871 of 2022 (O&M)
Decided on: 22.11.2022**

Jai Parkash

....Petitioner

Versus

Union of India through Intelligence Officer, Amritsar

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. J.S. Thakur, Advocate for the petitioner.

Ms. Gurmeet Kaur Gill, Advocate
for the respondent – NCB.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this 2nd 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 NCB Crime No.36 of 2020 dated 02.07.2020 registered under Sections 8, 22, 25, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act'), pending before the Judge, Special Court, Jalandhar vide NDPS No.9589/2020.

Counsel for the petitioner has submitted that the new ground for filing this 2nd petition is that the petitioner is the first offender and he is in custody for the last 02 years and 04 months and no PW has been examined so far and it will take some time in conclusion of the trial.

Counsel for the petitioner has argued that as per the allegations in the complaint filed by NCB, it is stated that on 02.07.2020, an information was received by the Intelligence Officer

from reliable source that the petitioner will come and sell the TRAMADOL tablets at Jalandhar on 02.07.2020 between 13:00 Hrs to 14:00 Hrs. Thereafter, a team was constituted and the petitioner was apprehended and recovery of 3,000 tablets of TRAMADOL was effected, the details of which is given in the complaint. It is also stated that on preliminary enquiry, the petitioner further disclosed that a person namely Ajay Kumar, who worked in a Courier Company has given him the tablets for selling them and both of them were to share the profit. It is also submitted that the co-accused of the petitioner namely Ajay Kumar has already been granted the concession of regular bail. Lastly, it is argued that no PW has been examined so far, the petitioner is in custody for the last 02 years and 04 months and it will take some time in conclusion of the trial.

Counsel for the petitioner has 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.”

Reply on behalf of the respondent – NCB is on record and as per the reply, after reporting the facts given in the complaint, it is stated that when the NCB team apprehended the petitioner, he himself disclosed that he is carrying the TRAMADOL tablets in 12 boxes and thereafter, he disclosed his identity and the details of the tablets were given in the complaint.

In Para 7 of the reply, it is specifically stated that since the recovery was effected from the polythene bag hanging on the motorcycle, therefore, there was no requirement of compliance of Section 50 of the NDPS Act.

On a Court query, whether the personal search of the petitioner was conducted or not, counsel for the respondent – NCB could not give any satisfactory reply as it is neither mentioned in the complaint nor in the reply.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 02 years, 04 months and 17 days; the co-accused of the petitioner is already released on bail; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; no PW has been examined, so far 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

22.11.2022

yakub

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No