

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-22465-2021
Date of decision : 18.05.2022

Paramjeet Singh @ Pammi

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Manpreet Ghuman, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.25 dated 28.03.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short "NDPS Act") (Section 29 of the NDPS Act has been added later on) at Police Station Lakhoke Behram, District Ferozepur.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and has been picked up from his house. It is further submitted that a perusal of the FIR (Annexure P-1) would show that the same was registered at the instance of Shimla Rani, Incharge, CIA Staff who stated that she, along with other police officials including Sukhjant Singh, were patrolling when an informer had informed them that the present petitioner was carrying intoxicant tablets and accordingly on 28.03.2021, the petitioner was apprehended at village

Chakh Megha. It is also submitted that a perusal of the vernacular of the FIR would show that the ruqa had been sent at 05:30 PM and the said ruqa was typed but in the FIR there was no mention of the fact that the police party was carrying a printer or laptop. It is stated that when the matter came up before a coordinate Bench of this Court on 15.12.2021, the following order was passed:-

“The reply filed on behalf of the respondent-State, dated 12.10.2021, is ordered to be taken on record.

Learned counsel for the petitioner has inter alia submitted that it not having been mentioned in the FIR at all that the police party was carrying any laptop and printer and they allegedly having been told of the petitioner carrying contraband with him only when they were on routine patrolling, by a secret informer, it would not be expected that they would be carrying such equipment; and actually the recovery has been planted on the petitioner, with him having been picked up from home and not at the place shown in the FIR, with even the 'Ruka' being a printed one, showing that it was obviously printed elsewhere than at the spot shown in the FIR.

Other than learned counsel for the petitioner pointing out from any statutory rules, or even executive instructions, that it needs to be mentioned as to what equipment a police party is carrying, the SSP Ferozepur, is directed to obtain the call details records of every member of the police party as is alleged to have apprehended the petitioner, for the period between 05:00 a.m. on 28.03.2021 till 09:00 p.m. on the same date, also giving therein the location of the tower location of each member of the police party during the said period (as per mobile phone records). Similarly, call details records of the mobile phone used by the petitioner would be obtained and placed on record by way of an affidavit of a gazetted officer, the said mobile number being 75290-73189 as per counsel for the petitioner.

Adjourned to 11.12.2022.

December 15, 2021

**(AMOL RATTAN SINGH)
JUDGE”**

It is also stated that in pursuance of said order, the State has

filed a short affidavit in which the call details of various persons who were members of the police party, who had got the alleged recovery effected, has been detailed. Learned counsel for the petitioner has referred to Annexure R-1, which are the call details of SI Shimla Rani, CIA staff as per which, at 17:54:02 on 28.03.2021, she was at Golu ka Mour, which is at a distance of 15 kilometers from the place of incident. Reference has also been made to Annexure R-6, which are the call details of Sukhjant Singh as per which at the said time, i.e. 17:59:01(05:59 PM), the said police official was at village Lalchian and it is thus, submitted that even the police party was not at the same place, at the time when the alleged recovery had been effected. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 28.03.2021 and challan in the present case has already been presented and there are 13 prosecution witnesses and none of them have been examined, thus the trial is likely to take time. It is also submitted that the petitioner is not involved in any other case.

Learned State counsel has opposed the present petition and has submitted that the petitioner was apprehended at the spot and recovery of commercial quantity of narcotic drugs was effected from her. It is further submitted that disputed questions of fact have been raised by learned counsel for the petitioner. It is further submitted that with respect to laptop and printer being carried or not, there is no statutory provision or any instructions issued by the Director General of Police.

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

The petitioner has been in custody since 28.03.2021 and the challan has been presented in the present case and there are 13 prosecution

witnesses, none of them have been examined and thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. The arguments which have been raised by the learned counsel for the petitioner would raise a debatable issue to the effect whether the petitioner was picked up from his house or was actually apprehended on the spot, as per the FIR version and the said fact would be finally adjudicated during the course of trial.

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:

“ 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.

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 applicant-appellant therein was suspended after primarily considering

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 petitioner has been in custody since 28.03.2021 and all the abovesaid 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.

Keeping in view the above said debatable issue as well as the fact that the petitioner has been in custody since 28.03.2021 and 13 prosecution witnesses are yet to be examined and thus, the trial is likely to take time and the petitioner is not involved in any other case, 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 his 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 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 18, 2022
Davinder Kumar

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