

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(208)

CRM-M-20823-2022

Date of decision: - 20.05.2022

Jugal Kishore

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sandeep Sharma, Advocate
for Mr. Aditya Pratap Singh, Advocate,
for the petitioner.

Mr. M.S. Nagra, Assistant Advocate General, 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.160 dated 18.09.2020, registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), at Police Station Division No.1, District Pathankot.

Learned counsel for the petitioner has submitted that in the present case, as per the FIR, recovery has been made from two persons i.e. Ravdeep Singh alias Sheru and Rakesh Sharma and no recovery has been effected from the present petitioner and as per the version in the FIR, the petitioner had ran away from the spot and it is the said two persons, who had informed the police that it is the present petitioner who

was the said person who fled from the spot. It is further submitted that the petitioner is not involved in any other case and he has been in custody since 26.08.2021 and there are 26 prosecution witnesses, out of which, only one witness has been partially examined and thus, the trial is likely to take time. It is also submitted that the other co-accused, namely, Vikrant Singh, Subash Chander @ Bittu and Davinder Singh, from whom also no recovery has been made, have already been granted the concession of regular bail by this Court, vide order dated 06.04.2022. It is also submitted that even co-accused Ravdeep Singh alias Sheru and Rakesh Sharma have already been granted the concession of regular bail vide order dated 11.05.2022 and although, counsel appearing for the petitioners has raised the arguments against the present petitioner, but even as per the said co-accused i.e., Ravdeep Singh alias Sheru and Rakesh Sharma, the recovery has been made from one Gati Courier Services and not from the present petitioner and the said recovery, as per the arguments of the said two co-accused, was made on 17.09.2020 at 5.00 PM from Gatti Courier Services and not on 18.09.2020. Be that as it may, it is submitted that as per the prosecution version, no recovery has been effected from the present petitioner.

Learned State counsel, on the other hand, has opposed the present petition for the grant of regular bail and has submitted that as per the FIR, the petitioner was also present along with Ravdeep Singh alias Sheru and Rakesh Sharma, but he has managed to escape when the police arrived. Learned State counsel has placed on record the custody certificate, as per which, the custody of the petitioner is 8 months and 22

days and there is no other case against the petitioner. However, the other factual aspects have not been disputed by learned State counsel.

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

The petitioner is stated to have been in custody since 26.08.2021 and there are 26 prosecution witnesses, out of which, only one witness has been partially examined and thus, the trial is likely to take time. The petitioner is not involved in any other case and no recovery has been effected from him and even as per the FIR, recovery was made from co-accused Ravdeep Singh alias Sheru and Rakesh Sharma and the petitioner allegedly managed to escape. The co-accused, namely, Vikrant Singh, Subash Chander @ Bittu and Davinder Singh, from whom also no recovery had been made, have already been granted the concession of regular bail by this Court, vide order dated 06.04.2022 and even Ravdeep Singh alias Sheru and Rakesh Sharma have been granted the concession of regular bail vide order dated 11.05.2022 although, the said Ravdeep Singh alias Sheru and Rakesh Sharma had implicated the present petitioner, but even as per their case, it is apparent that the alleged recovery was effected on 17.09.2020 at 5.00 PM from Gati Courier Services and not on 18.09.2020 from the premises as has been alleged in the present FIR. At any rate, no recovery was effected from the present petitioner.

With respect to Section 37 of the NDPS Act, it would be relevant to note that in 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 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. 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 26.08.2021 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 26.08.2021 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 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 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 20, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No