

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-23648-2021

Date of decision : 11.05.2022

Kulwinder Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.G.S.Sandhu, Advocate for
Mr.P.K.S.Phoolka, 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.0036 dated 08.03.2021 registered under Section 22(C)/61/85 of the Narcotic Drugs and Psychotropic Substances Act (in short “NDPS Act”) at Police Station Sangat, District Bathinda.

Learned counsel for the petitioner has submitted that the petitioner is a 65 year old lady, who is suffering from severe health problems and her vision is very weak and to substantiate the same, has relied upon the medical report (Annexure P-2). It is further submitted that the petitioner was arrested on 08.03.2021 and she has been in custody for more than last 1 year and 2 months and out of 11 prosecution witnesses, none have been examined and thus, the trial is likely to take time. It is

were walking and on the basis of suspicion, they were apprehended and from each of them 114 grams of Alprazolam was recovered. It is stated that as per the allegations in the FIR, the petitioner was carrying the said substance in a transparent plastic bag. It is also stated that it is highly unlikely for a person who has to carry the contraband, to carry the same in a transparent polythene bag and with respect to the same, learned counsel for the petitioner has relied upon various orders passed by coordinate Benches of this Court i.e. order dated 02.08.2021 passed in **CRM-M-4408-2021** titled as ***"Banti Kaur @ Bhanti Kaur Vs. State of Punjab, Jaskaran Singh @ Jassu Vs. State of Punjab***, reported as **2021(2) RCR (Criminal) 837**, ***Binder Kaur @ Goga Vs. State of Punjab*** reported as **2021(3) RCR (Criminal) 360**, and order dated 28.02.2020 passed in **CRM-M-8026-2020** titled as ***Lakhwinder Singh @ Lakha Vs. State of Punjab***.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that recovery of total 218 grams of Alprazolam has been effected from the petitioner and her co-accused. It is also submitted that the petitioner is involved in two other cases under the NDPS Act and thus, does not deserve the concession of bail.

Learned counsel for the petitioner, in rebuttal, has submitted that both the said cases under the NDPS Act, the petitioner has been granted bail and one of the said cases pertains to small quantity and other case pertains to moderate quantity. He has relied upon the judgment of Hon'ble Supreme Court in ***"Maulana Mohd. Amir Rashadi vs. State of U.P. and another"***, reported as **2012 (2) SCC 382** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected

solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

A perusal of the FIR would show that the alleged recovery which has been effected from the present petitioner is stated to have been carried by the petitioner in her hand in a transparent plastic bag. The Coordinate Bench of this Court in ***Banti Kaur @ Bhanti Kaur's*** case (supra) has held as under:-

“1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against her vide FIR No.191, dated 8.10.2020, Police Station Cantt Bathinda, District Bathinda, under Section 22 of NDPS Act, wherein it is alleged that the petitioner was caught red-handed while carrying a transparent plastic polythene bag which was found to contain 1000 tablets of ‘Clovidol’.

2. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the instant case and that she has an unblemished record and is not involved in any other case and it is highly unlikely that any person who is carrying contraband would carry the same in a transparent bag so as to invite attention, including that the police.

3. Opposing the petition, learned State counsel has not disputed the fact that the contraband is alleged to have been carried in a transparent plastic polythene bag. He has however, submitted that the weight of the total recovered contraband works out to 410 grams of ‘Tramadol’ which would fall within the category of ‘commercial quantity’. Learned State counsel has however, informed that the petitioner is not involved in any other

case and has presently been behind bars since the last about 9 months and 17 days.

4. *I have considered rival submissions addressed before this Court.*

5. *It is not disputed that the contraband was alleged to have been carried by the petitioner in a transparent polythene bag. It is certainly highly unlikely that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. Carrying contraband in a transparent polythene bag making it clearly visible to others would surely invite attention of everybody who passes by. In these circumstances the case of the prosecution is rather rendered suspect particularly in view of the fact that the petitioner is not even stated to be a previous convict and is a lady who has been behind bars since the last about 9 months. In view of the aforesaid discussion particularly the fact that the petitioner is a lady and is not even a previous convict, the petition is accepted and the petitioner is ordered to be released on bail subject to her furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.*

2.8.2021

(GURVINDER SINGH GILL)
JUDGE”

A perusal of the said judgment would show that although, in the said case, recovery was of commercial quantity but it was found that since recovery was effected from a transparent polythene bag, the same made the case of the prosecution doubtful and it was observed therein that as it was highly unlikely that a person who is committing an offence with respect to the contraband, would carry the contraband in a transparent polythene bag.

The Coordinate Bench in ***Jaskaran Singh @ Jassu's*** case (supra), after considering several judgments on the same issue, had also granted the concession of regular bail to the petitioner in that case. Relevant

“xxx xxx

2. Relies upon the decision of this Court in *Lakhwinder Singh alias Lakha vs. State of Punjab* (CRM-M No.8026 of 2020) and of Co-ordinate Benches in *Binder Kaur alias Goga vs. State of Punjab* (CRM-M No.4584 of 2020) and *Mandir Singh vs. State of Punjab* (CRM-M No.8035 of 2019) to contend that a person engaged in the trade of contraband would never be expected to carry the same in any transparent bag which would be visible to the naked eyes.

3. Per contra, the bail application is opposed on behalf of the State by contending that the recovery of commercial quantity of contraband was made from the car of the petitioner himself.

4. Be that as it may, without prejudice to the merits of the submission raised on behalf of the petitioner, but considering that he is admittedly not involved in any other case under the NDPS Act, and also considering that he has remained in detention well above 05 months since 14.12.2019, at this stage, the petitioner may be released on regular bail to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned subject to imposition of appropriate terms and conditions.

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The Coordinate Bench of this Court in ***Binder Kaur @ Goga's***

case (supra), had held as under:-

“xxx xxx

2. Learned counsel for the petitioner has vehemently argued that in the present case the petitioner has been falsely implicated. He has further stated that the petitioner is a young lady of 38 years of age, having a family and has good antecedents. He has further stated that there is no past history of the petitioner and she is not involved in any other case till date. He has further contends that even as per the allegations contained in the FIR, the petitioner was carrying 1000 tablets containing Tramadol Hydrochloride salt in her hand, which was in a transparent polythene bag. Learned counsel states that the story put forward by the police is ex facie concocted because in case any person wishes to do the trading or to carry the contraband then it would never be put in a transparent bag. He has further pointed out that in the FIR it has been repeatedly recorded that bag was transparent in nature. He has further submitted that the petitioner is in custody since 08.11.2019.

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4. Learned State counsel has filed the custody certificate of the petitioner by way of affidavit of Rajdeep Singh Brar, Deputy Superintendent, Central Prison, Faridkot. Same is taken on record. As per the custody certificate the petitioner is in custody for a period of 02 months and 27 days and there is no other case against her. He further submits that after completion of investigation and presentation of challan, the charges have also been framed by the trial Court.

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6. At the time of deciding bail application there are various relevant factors, which can be taken into consideration. Prima facie probability of influencing witnesses is one of the element factor and also as to whether the petitioner is particularly involved in any other case is also a relevant factor. It is also relevant in any case for deciding the bail application as to what is the stage of the case. In the present case the investigation is already over and the petitioner is in custody for about three months and this Court while deciding the bail application would not go into the merits of the case. Nothing is apparent to show that petitioner may influence the witnesses. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court.

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A perusal of the above judgment would show that in fact, bail was granted on the said point in a case where the accused was in custody only for a period of three months. Similarly, in **Lakhwinder Singh @ Lakha's** case (supra), the Coordinate Bench of this Court had held as under:-

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2. Ld. Counsel for the Petitioner relies on a decision of a Coordinate Bench of this Court in 'CRM-M No.4584 of 2020 - Binder Kaur alias Goga vs. State of Punjab', to contend that it is unbelievable that a person engaged in the business of Drug Smuggling, will carry the contraband in a transparent Bag. The applicant, in the aforesaid case, in the given circumstances, considering that she was not involved in any other case under the

NDPS Act and challan against her had already been submitted, was therefore released on bail by the Bench after she had remained in detention for 02 months and 27 days.

3. The detention undergone by the present Petitioner is much more being 08 months, and he is also not stated to be involved in any other case under the NDPS Act.

4. Challan against the Petitioner has already been submitted and the trial is still pending.

5. As such, considering the long detention already undergone by the present Petitioner and without commenting on other merits of the case, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court concerned.

6. Disposed off.”

The above said aspect would show that there are arguable points in the present case. Moreover, the petitioner has been in custody since 08.03.2021 (more than 1 year and 2 months) and the challan in the present case has already been presented and there are 11 prosecution witnesses and none of them have been examined and thus, the trial is likely to take time. The petitioner is a 65 year old lady, who is stated to be suffering from various health issues including, an eye problem.

With respect to the bar under Section 37 of the Act of 1985, it would be relevant to refer to various judgments passed by the Hon'ble Supreme Court as well as by this High Court. 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**

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:

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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**

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

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 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.

Keeping in view the facts and circumstances of the case, this Court feels that in the present case, there are arguable points involved which would be determined during trial. Further 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 ordered to be released on bail on her furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to her 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 she is accused of, or for commission of which she 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.

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

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No