

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106+209

CRM-M-25728-2021(O&M)

Decided on :30.05.2022

Amritpal Singh

. . . Petitioner

Versus

State of Punjab

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. C. M. Munjal, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (Oral)

CRM-19258-2022

Allowed as prayed for.

Annexures P-3 to P-9 are taken on record subject to all just
exceptions.

Main Case

The present petition has been filed under Section 439 of
Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 66
dated 22.04.2021 under Sections 18, 22, 61 and 85 of the Narcotic
Drugs and Psychotropic Substances Act, 1985 registered at Police
Station Sadar Khanna, District Khanna.

Learned counsel for the petitioner has submitted that the
petitioner has been falsely implicated in the present case and has referred
to the recovery memo (Annexure P-4), memo of search under Section 51
Cr.P.C. (Annexure P-5), documents pertaining to the information given to
relatives of the accused with respect to the arrest of the petitioner

(Annexure P-6), report of arrest dated 22.04.2021 (Annexure P-7) to show that in all the said documents, the FIR no. alongwith the date of registration and also the details of the sections of the alleged offences have been mentioned. It is further submitted that although, in the documents Annexure P-5 to Annexure P-7, the date of the FIR has been mentioned as 22.04.2021, in the document Annexure P-8, it has been mentioned as 21.04.2021. It is further submitted that the document Annexure P-8 is with respect to the taking of thumb impression of the petitioner. It is contended that as per the identification certificate dated 22.04.2021 (Annexure P-9), it has been stated on the said date itself that the challan is to be presented in the Court against the petitioner although, as per majority of the documents, the FIR had been registered on 22.04.2021 itself. It is further contended that the petitioner is in custody since 23.04.2021 and there are as many as 16 witnesses out of whom, none have been examined and thus, the trial is likely to take time. Reliance has been placed by the learned counsel for the petitioner upon the judgment of Division Bench of this Court in ***Didar Singh @ Dara Vs. The State of Punjab***, reported as ***2010(3) RCR (Criminal) 337*** in support of his arguments.

Learned State counsel, on the other hand, has opposed the present application for regular bail and has placed on record the custody certificate, as per which the custody period as mentioned by the learned counsel for the petitioner stands reiterated. It is further submitted that the date of the recovery memo is mentioned as 22.04.2021 and the FIR has also been registered on the same date and thus, there is no infirmity in the documents prepared. It has been pointed out that the petitioner is involved

in one more case under the NDPS Act.

Learned counsel for the petitioner has rebutted the said argument and had submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others*** 2012 (2) SCC 382 reference has been made to the relevant portion of paragraph 6 which 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 paperbook.

The Division Bench in ***Didar Singh @ Dara's case*** (*supra*) had observed as under:-

“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is

*admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In **Ajay Malik & Ors. v. State of U.T. Chandigarh, 2009(3) RCR (Crl.) 649**, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e. either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.*

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32. In view of the aforesaid discussion, the appeal is allowed and the impugned judgment of conviction and order of sentence passed by the Judge, Special Court, Amritsar are set aside. The appellant, who is in custody, be set at liberty forthwith if not required in any other case.”

A coordinate Bench of this Court in Ajay Kumar @ Nannu's case (supra) had held as under:-

“(iii) that mentioning of number of FIR and additional offences in the recovery memo shows manipulation and fabrication of recovery memo subsequently in the police station which denudes recovery memo of any sanctity and strikes out integrity and shatters credibility of the prosecution version and entitles the petitioners to grant

*of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in judgments passed in **Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H); Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H);** where mentioning of subsequent details in recovery memo was held to affect sanctity/credibility of recovery memo and **Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M- 44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M- 34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S2212- SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 where bail was granted/ suspension of sentence was allowed on this ground.***

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*16. In **Mustakeem @ Sirajudeen Vs. State of Rajasthan : AIR 2011 SC 2769** it was held by Hon'ble Supreme*

*Court that if the recovery memos were prepared at the Police Station itself then the same would lose its sanctity. In **Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H)** it was held by this Court that presence of FIR details on recovery memos etc. leads to two inferences: either the FIR was registered prior to the alleged recovery of contraband or the number of FIR was inserted in these documents after its registration in both the situations it seriously reflects upon the integrity of the prosecution version. This view was upheld and reiterated by the Division Bench of this Court in **Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H)** and mentioning of such details in recovery memo was held to affect sanctity/credibility of recovery memo. In **Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-6504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs.***

State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 bail was granted/suspension of sentence was allowed on this ground.

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20. In view of the above, the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing of personal bond and bond of one surety in heavy amount to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

Similarly, a coordinate Bench of this Court in **Rajandeep Singh**

@ Ghughi's case (supra) had held as under:-

*“In this backdrop, the submission made by Ld. Counsel for the petitioner is that in view of the decision of the Supreme Court in **Ram Chander Sharma @ Pandit v. State (NCT Delhi) Criminal Appeal No. 1809 of 2009**, the existence of the FIR on the recovery memo when the FIR was not itself drawn up would point to the case against the petitioner being a fabricated one. Reliance has thereafter been placed upon an earlier decision of this Court in **Ajay Malik v. State of U.T. Chandigarh, 2009(3) RCR (CrI.)649 (P&H)** which was thereafter followed by the Division Bench in the decision of **Didar Singh @ Dara v. State of Punjab, 2010(3) RCR (Criminal) 337 (P&H) (DB)**. Various Benches of this Court have subsequently granted bail to such accused persons in view of these decisions wherever number of the FIR was seen to have been noted down in the documents purported prepared before registration of the FIR itself.*

[(i) CRM-M-38153-2019 titled Satish Kumar v. State of Punjab;

(ii) CRM-M-42370-2019 titled Tarsem Lal v. State of

Punjab;

(iii) CRM-M-44921-2019 titled Gurdeep Singh v. State of Punjab;

(iv) CRM-M-32615-2018 titled Rinku Singh v. State of Punjab;

(v) CRM-M-61999-2018 titled Jatinder Vashisht v. State of Punjab; (

vi) CRM-M-34433-2019 titled Harvinder Singh @ Shammi v. State of Punjab.]

Similarly in :-

(vii) CRM-20778-2018 in CRA-S-2212-SB-2016 titled Kashmir Singh @ Kokki v. State of Punjab; and

(viii) CRM-19587-2019 in CRA-S-2884-SB-2016 titled Charno v. State of Punjab, the benefit of suspension of sentence even in favour of the convicts was granted by this Court for the same reason, i.e. existence of the F.I.R. number on the Recovery Memo/ Documents prepared before registration of the F.I.R.”

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[8] In addition, Ld. Counsel for the petitioner has separately relied upon an appropriate format of the Recovery Memo pertaining to Heroin in FIR No. 232 dated 24.09.2016, Police Station Chheharta Amritsar to demonstrate in what manner the relevant FIR number is to be shown. Perusal of the same goes to show that the recovery from the concerned accused Karan Singh @ Karan s/o Watan Singh was purportedly effected on 23.09.2016, but the relevant FIR No. 232 dated 24.09.2016 was separately entered on the margin which was totally distinct from the original contents with a separate/categorical noting that the memo in question pertains to the said FIR drawn up on the following day. The said document is now tagged as Annexure 'X' with the record. It would, therefore, be clear that such format

was being followed by the Narcotic Cell Authorities of the area for more than three years prior to the apprehension of the petitioner in the present case, and so mentioning of the FIR number in the very beginning of the Recovery Memo as done in the present case, and not by way of a subsequent explanatory endorsement to indicate that it relates to the relevant FIR drawn up subsequently, would only go to support the contention raised on behalf of the petitioner.

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[11] The petition is, therefore, allowed and the petitioner is directed to be released on bail to the satisfaction of the Ld. Trial Court/ Duty Magistrate, concerned.”

Perusal of the above said judgments would show that Division Bench as well as the coordinate Bench of this Court had considered the contention raised by learned counsel for the present petitioner to be one of the points while granting regular bail to the petitioner therein. Even in a case involving commercial quantity, it was observed that in such a situation only two inferences can be drawn, i.e., either the FIR was registered prior to the alleged recovery of contraband or the number of the FIR has been inserted in the document after its registration and both situations seriously reflect upon the integrity of the prosecution version and the same is a serious lapse in the prosecution case and creates a doubt in the prosecution theory. The coordinate Bench of this Court in ***Rajandeep Singh @ Ghughi's*** case (supra) had even explained as to how an entry was to be made with respect to the FIR which was entered into subsequently and it was observed that separate/categorical noting to the effect that FIR and its number having

been mentioned, should be made. The same has not been done in the present case.

Similarly, in the present case, the abovesaid facts would raise a debatable issue as to whether the documents in question had been prepared in the present case in accordance with law and whether or not they indicate towards a serious lapse in the case of the prosecution. The said factor would be adjudicated finally at the time of the trial. This Court does not wish to pass any final comment with respect to the said aspect as the same could cause prejudice to either of the parties during the course of the trial.

With respect to Section 37 of the NDPS Act, it would be relevant to note 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 the concession of 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 charge sheet 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:

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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 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 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 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.

Since in the present case, there are arguable points and the petitioner is in custody since 23.04.2021 and the challan has been presented and there are as many as 16 witnesses in the present case, none of whom have been examined and the trial is likely to take time, thus, keeping in view the abovesaid facts and circumstances, 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. Moreover, to meet the object of Section 37 of the NDPS Act, this Court proposes to impose the following conditions that the petitioners shall abide by:-

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 he is accused of, or for commission of which he is 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 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 30th,2022
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No