IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

231

CRM-M-24377-2022 (O&M)
Date of decision: 31.08.2022

RAVINDER SINGH @ MITHA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

*****

Present : Mr.Gaurav Dutta, Ms. Simarpreet and
Mr. Rachit Sharma, Advocates
for the petitioner.

Mr. Tarun Aggarwal, Sr.DAG Punjab.

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VIKAS BAHL. J. (ORAL)

CRM-31729-2022

This is an application filed for grant of leave under Rule 3-A(1) of Chapter VI, Part B, Volume V of Punjab and Haryana High Court Rules and Orders to file the present petition.

In view of averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present petition.

CRM-M-24377-2022

This is the second petition filed under Section 439 CrPC for grant of regular bail to the petitioner in case FIR No.20 dated 05.02.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Rupnagar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 05.02.2021. There are 17 prosecution witnesses out of which only 02 witnesses have been examined and thus the trial is likely to take time. It is

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submitted that as per the recovery memo (Annexure P-8), the petitioner was carrying the intoxicant powder in a transparent polythene bag and has submitted that it is very unlikely that a person would carry contraband in a transparent polythene bag and on the said aspect the counsel for the petitioner has relied upon various orders passed by coordinate Benches of this Court in case titled as "***Banti Kaur @ Bhanti Kaur Vs. State of Punjab***, ***Binder Kaur @ Goga Vs. State of Punjab*** reported as ***2021(3) RCR (Criminal) 360***, ***Jaskaran Singh @ Jassu Vs. State of Punjab***, reported as ***2021(2) RCR (Criminal) 837***, order dated 28.02.2020 passed in ***CRM-M-8026-2020*** titled as ***Lakhwinder Singh @ Lakha Vs. State of Punjab***.

It is further submitted that the petitioner has never been involved in any other case and has been falsely implicated in the present case inasmuch as a perusal of the ruqa appended as Annexure P-6, would show that secret information was received to the effect that the petitioner was carrying some intoxicant white powder and yet, even prior to any actual recovery having been effected, the provisions of Section 22/61/85 of the NDPS Act had been invoked on the basis of the said information alone. It is submitted that Section 22 of the NDPS Act deals with the punishment for contravention in relation to psychotropic substances and it would be a matter of debate as to how the police officials were aware and sure beforehand of the recovery of psychotropic substances, when the secret information was given only with respect to some white powder.

Learned State counsel on the other hand has opposed the present petition for regular bail and has submitted that recovery in the present case is of commercial quantity as the same was 300 grams of Tramadol Hydrochloride and the same is commercial quantity as stipulated under the Act and thus the bar under Section 37 of the NDPS Act would apply.

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2022.09.02 18:40
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This Court has heard the learned counsel for the parties and perused the material on record.

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*

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2022.09.02 18:40
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> *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 some contraband, would carry said 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 granted the concession of bail to the petitioner in that case. Relevant portion of the judgment is reproduced as under:-

> *"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*

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2022.09.02 18:40
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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."

The coordinate Bench of this Court in Binder Kaur @ Goga's case (supra), had held as under:-

"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. xxx xxx xxx

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

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2022.09.02 18:40
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> *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.*
>
> *xxx xxx xxx*
>
> *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."*

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), Coordinate Bench of this Court had held has under:-

> *"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*

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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."

A perusal of the recovery memo (Annexure P-8) would show that even in the present case the petitioner was stated to be carrying the intoxicant substance in a transparent polythene bag and thus, the point which arose in the above said cases also arises in the favour of the petitioner in the present case.

The question as to whether the petitioner has been falsely implicated in this case or not, would be finally adjudicated during the course of the trial. The petitioner is in custody since 05.02.2021 and out of 17 witnesses, only 02 witnesses have been examined so far thus the trial is likely to take time. The petitioner is stated to be not involved in any other case.

The first bail petition of the petitioner was dismissed as withdrawn on 29.03.2022 and even thereafter, a substantial time has elapsed, thus entitling the petitioner to file the present second bail petition.

Keeping in view the abovesaid facts and circumstances as well as the judgments discussed above, the present petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case. Moreover, to meet the object of Section 37 of the NDPS Act, this

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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 an 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.

Pending applications, if any, shall stand disposed of.

(VIKAS BAHL)
JUDGE

August 31, 2022
S.Sharma(syr)

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

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