

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-26406-2021
Date of decision : 02.08.2022

Gurdeep Singh @ Harbans Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Amaninder Singh Sekhon, 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.13 dated 05.02.2020 registered under Sections 22/61/85 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short "NDPS Act") at Police Station Sadar Faridkot, District Faridkot.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 05.02.2020 and the investigation is complete and out of 15 witnesses, 5 witnesses have been examined and 2 witnesses have been given up, but 8 witnesses are yet to be examined and thus, the trial is likely to take time. It is further submitted that the petitioner is 71 years old and keeping the present petitioner in further incarceration would be in violation of his right under Article 21 of the Constitution of India and for the said purpose, has relied upon the judgment dated

12.01.2022 of Division Bench of this Court in ***CRM-3773-2019 in CRA-D-198-DB-2017*** titled as ***“Bhupender Singh vs. Narcotics Control Bureau”***. It is further submitted that as per the FIR, the petitioner was stated to be holding a transparent polythene bag in his hand in which the alleged tablets were being carried. It is stated that in cases where the allegation is that the accused was carrying the intoxicant substance in a transparent polythene bag, the coordinate Benches of this Court have been pleased to grant regular bail, even where the recovery effected was of commercial quantity. 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 in the present case, the recovery of 1200 tablets, i.e., 93 grams of Diphenoxylate Hydrochloride has been effected from the present petitioner, whereas the commercial quantity with respect to the said intoxicant drug starts from 50 grams and thus, the recovery effected from the petitioner is of commercial quantity.

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

The Division Bench of this Court in ***CRM-3773-2019 in CRA-D-198-DB-2017***, vide a detailed judgment dated 12.01.2022, has

observed as under:-

1. The issue at hand is the consideration for suspension of sentence in cases under the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act'). Section 37 of the Act is reproduced herein below:-

“ 37. Offences to be cognizable and non-bailable-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

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27. Thus we find that in the year 1994, the Supreme Court held that a person who had undergone five years of pre-convict custody was entitled to be released on bail, on the touchstone of Article 21 of the Constitution of India. Though this judgment related to undertrials and only one time directions were issued, however, the directions in no way can be said to be against the legislative intent but are in furtherance of Article 21 of the Consitution of India. Therefore, it will also not be inappropriate if similar principles are followed with some variations and modifications in cases relating to convicts who are languishing in jails for the reasons that their appeals are not likely to be heard for a considerable period.

28. Then in P. Ramachandra Rao, where the accused was found to have amassed assets disproportionate to his known sources of income and the charge-sheet was filed for offences under Sections

13(1) (e) read with Section 13(2) of the Prevention of Corruption Act, 1988, the constitutional bench of the Supreme Court stressed upon speedy trial at the touchstone of Articles 21, 19 and 14 and the Preamble of the Constitution as also from the Directive Principles of State Policy.

29. Then we have Surinder Singh @ Shingara Singh, where the convict was awarded the sentence of life imprisonment for an offence under Section 302 IPC and the interim order granting him bail had been made absolute. However, the Supreme Court again stressed upon speedy trial and specifically observed that the difficulty arises when the appeal preferred by such a convict cannot be disposed of within a reasonable time.

30. Then came Tule Ram, wherein a full bench of this Court after perusing the data provided with regard to the pendency or disposal of appeals under the Act went into the question as to what was the extent of the power for suspension of sentence which could be exercised by the High Court while dealing with the applications for suspension of sentence in appeals under the NDPS Act. The bench held that the Appellate Court had no power to suspend sentence during pendency of the appeal and that the Act makes no provision for post-conviction suspension of sentence. The exception, however, that was carved out was that when there is delay in disposal of the appeal which is not attributable to the convict, the Court may pass such orders as the convict may be entitled to in view of the provisions of Article 21 of the Constitution of India.

31. Thereafter, in Daler Singh, where the recovery was of 35 kg of poppy husk and the convict had undergone 7 years out of the total sentence of 12 years awarded under the Act, a division bench of this Court had suspended the sentence and had also laid down some principles for releasing the convicts under the NDPS Act at the touchstone of Article 21 of the Constitution of India.

32. Then in Dalip Singh, which was a case of murder, certain guidelines had been laid down by a full bench of this Court for the purpose of bail during trial and for suspension of sentence pending appeal in the spirit of Article 21 of the Consitution of India while considering various other factors of the case.

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35. Then we have K.A. Najeeb, wherein the accused was facing trial under UPA, IPC and Explosives substances Act, the Supreme Court granted bail after 4 years of custody while holding that once

it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

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37. Then in Pawan Kumar and another, where the recovery was of 15.5 kg of opium, the Supreme Court upheld the decision of this Court granting suspension of sentence to one of the convicts who had undergone 7½ years out of the total sentence of 15 years awarded under the Act.

38. Then in Mahamood Kurdeya, where the recovery was of 50 kg 800 grams of contraband from the Syrian national and who had undergone 3 years 3 months of custody, the Supreme Court had granted bail on the ground that even the trial had not been commenced till now.

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41. The salient factor in all the cases relied upon by the learned counsel for the respondents is that in none of those cases the convict/accused could even argue that his case was covered under Article 21 of the Constitution of India. None of the cases fell under the categories enumerated either in Supreme Court Legal Aid Committee or Daler Singh. The maximum custody in these cases was of Lokesh Chadha and Ratan Kumar Vishwas where also they had undergone less than 5 years of the sentence. In none of these cases, the Supreme Court disagreed with even one of the decisions relied upon by the learned counsel for the applicants-appellants. Thus, it has to be concluded that there is no divergence of opinion as sought to be projected by the learned counsel for the respondents-States. Where the convict/accused is not able to bring his case within the parameters of Article 21 of the Constitution of India the stringent provisions of Section 37 of the Act have to be applied.

42. In these circumstances, we would now examine all the cases under the parameters laid down in Supreme Court Legal Aid Committee and Daler Singh, of course with the clear understanding that the directions made therein are not mandatory and have to serve as guidelines. Those cases where the claim for suspension of sentence is made out on the basis of long custody would be disposed of by the present order while those where the claim is not supported by long custody would be segregated and listed for hearing individually. For convenience, the facts of each

case are briefly stated.

(1) CRM-3773-2019 in CRA-D-198-DB-2017

Custody certificate dated 27.12.2021 filed by way of affidavit of Yogesh Jain, Deputy Superintendent, Central Jail, Ferozepur is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 8 years & 11 months out of the total sentence of 15 years. Further in another FIR registered under the NDPS Act the applicant-appellant is already on bail. The recovery in the present case was of 14 kg 80 gm of heroin.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (*supra*), we deem it appropriate to suspend the sentence of the applicant-appellant-Bhupender Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(3) CRM-40754-2019 in CRA-D-956-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Satnam Singh, PPS, Additional Superintendent, Central Jail, Ludhiana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 6 years & 5 months out of the total sentence of 12 years. Further the applicant-appellant was 14 days' late from the date of surrender in jail. The recovery in the present case was of 1440 kg of poppy husk.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (*supra*), we deem it appropriate to suspend the sentence of the applicant-appellant-Charan Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(11) CRM-22787-2021 in CRA-D-1646-DB-2015

Custody certificates dated 29.11.2021 & 03.01.2022 filed by way of affidavit of Sewa Singh, Deputy Superintendent, District

Prison (Rohtak), Haryana are taken on record. As per the custody certificate, the applicant-appellant No.2-Virender has undergone actual sentence of more than 8 years & 10 months out of the total sentence of 20 years and the applicant-appellant No.4-Lalan Chaudhary has undergone actual sentence of more than 10 years & 9 months out of the total sentence of 20 years. The recovery in the present case was of 231 kgs of Charas.

Considering the period of incarceration already suffered by the applicant-appellants in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant No.2-Virender Singh and the applicant-appellant No.4-Lalan Chaudhary. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of

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(16) CRM-7105-2018 in CRA-D-427-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Iqbal Singh Brar, Superintendent, District Prison Sri Muktsar Sahib, Punjab is taken on record. As per the custody certificate, the applicant appellant has undergone actual sentence of more than 8 years & 5 months out of the total sentence of 15 years. The recovery in the present case was of 57 kgs 982 gms of heroin alongwith 2 pistols, 52 live cartridges and 3 magazines.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Khan Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(20) CRM-28686-2021 in CRA-D-101-2020

Custody certificate dated 28.12.2021 filed by way of affidavit of Manjit Singh Sidhu, PPS, Additional Superintendent, Central Jail Amritsar is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 6 years & 3 months out of the total sentence of 15

years. The recovery in the present case was of 8 kgs of heroin.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant-Gurdev Singh. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(24) CRM-11644-2019 in CRA-D-561-DB-2016

Custody certificate dated 29.12.2021 filed by way of affidavit of Satnam Singh, PPS, Additional Superintendent, Central Prison, Ludhiana is taken on record. As per the custody certificate, the applicant-appellant No.2-Gaganjit Singh @ Gogi has undergone actual sentence of more than 6 years & 9 months out of the total sentence of 15 years. Further another FIR has also been registered against the applicantappellant No.2-Gaganjit Singh @ Gogi under the NDPS Act. The recovery in the present case was of 3700 kgs of poppy husk.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant No.2-Gaganjit Singh @ Gogi. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

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(26) CRM-22916-2021 in CRA-D-163-DB-2015

Custody certificate dated 29.11.2021 filed by way of affidavit of Shailakshi Bhardwaj, Deputy Superintednent of Prison, District Prison Karna, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of more than 8 years & 4 months out of the total sentence of 14 years. The recovery in the present case was of 104 kgs 600 gms of charas.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the

appeal is not likely to be heard in the near future and that the present case is covered by Daler Singh's case (supra), we deem it appropriate to suspend the sentence of the applicant-appellant. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate.

Application stands disposed of.

(27) CRM-34571 & 34599-2019 in CRA-D-68-DB-2015 (O&M)

Custody certificate dated 29.11.2021 filed by way of affidavit of Surender Kumar, DSP1, Deputy Superintendent, District Prison Kaithal, Haryana is taken on record. As per the custody certificate, the applicant-appellant has undergone actual sentence of almost 6 years out of the total sentence of 12 years. The recovery in the present case was of 1 kg 700 gms of charas.

Considering the period of incarceration already suffered by the applicant-appellant in the present case and the fact that the appeal is not likely to be heard in the near future, we deem it appropriate to suspend the sentence of the applicant-appellant. Ordered accordingly. Bail to the satisfaction of the concerned C.J.M/Illaqua Magistrate/Duty Magistrate. Recovery of fine shall remain stayed during the pendency of appeal.

Applications stand disposed of.

A perusal of the above judgment would show that after considering the entire law on the subject, it was observed that, in case, the accused person is able to make out his case within the parameters of Article 21 of the Constitution of India, then he deserves the grant of bail, even in the face of Section 37 of the NDPS Act.

A further perusal of the above judgment would show that in a case where it was found that the applicant-appellant had undergone actual custody of 06 years and 03 months out of sentence awarded of 15 years and the recovery was of 8 Kg of Heroin, or had undergone actual custody of 06 years and 09 months out of the sentence awarded of 15 years and the recovery was of 3700 kgs of poppy husk or had undergone actual custody of

01 kg 700 grams of charas, the suspension of sentence was granted, primarily by considering the custody period undergone by the accused/convict in the case and without dwelling into the detailed merits of the case.

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 portion of the judgment is reproduced as under:-

“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:-

“xxx xxx

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.”

In the present case, the petitioner has been in custody since 05.02.2020 and the challan has already been presented and 8 witnesses are yet to be examined, thus, the trial is likely to take time. There are arguable points in favour of the petitioner and keeping in view the custody of the petitioner, further incarceration of the petitioner would be in violation of Article 21 of the Constitution of India as observed by the Division Bench of this Court in ***CRM-3773-2019 in CRA-D-198-DB-2017*** titled as ***“Bhupender Singh vs. Narcotics Control Bureau”***.

Keeping in view the facts and circumstances of the 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 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

August 02, 2022
Davinder Kumar

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