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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-24066-2022 (O&M)

Date of decision : 19.09.2022

Sukhwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Karandeep S. Sidhu, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

CRM-33879-2022

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.

Main case

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.88 dated 08.07.2021, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act,

1985 (hereinafter to be referred as “the Act of 1985”) (21, 23 which were added at the time of framing of charge on 27.10.2021), at Police Station Arniwala, District Fazilka.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 08.07.2021 and investigation has been completed and challan has been presented and there are 16 prosecution witnesses, out of which, only one witness has been examined and thus, the conclusion of trial is likely to take time. It is further submitted that the petitioner is not involved in any other case and that the petitioner has been falsely implicated in the present case. It is argued that the FIR in the present case has been registered on 08.07.2021 and even the petitioner had been arrested on 08.07.2021, as is apparent from Arrest Memo dated 08.07.2021 (Annexure P-12). It is further argued that although the alleged recovery, in the present case, has been shown to have been effected at 11:15 pm on 08.07.2021, the consent memo (Annexure P-13) is however dated 09.07.2021, which is after the arrest and the alleged recovery. It is contended that as per the mandate of Section 50 of the Act of 1985, the consent memo, vide which, an option to get searched before the Gazetted Officer or Magistrate, has to be given to the accused, has to be prior to the search of the petitioner, in pursuance of which, any recovery could be effected. It is stated that on the basis of the case of the prosecution itself, it is apparent that the said option had been given only subsequent to the alleged recovery effected from the present petitioner. It is, thus, submitted that there was a gross violation of Section 50 of the Act of 1985 in the present case. It is further contended that in the present case, recovery has

not been effected in the presence of the Magistrate or the Gazetted Officer but the said recovery has been effected in the presence of the ASI.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that recovery from the present petitioner is of intoxicant tablets which falls within the ambit of commercial quantity and thus, the bar under Section 37 of the Act of 1985 would apply in the present case and thus, the petitioner does not deserve the concession of regular bail.

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

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity has been effected, the Supreme Court as well as this Court have granted 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 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 Act of 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: -

“ 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 Act of 1985, 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;** reported as **(2021) 5 SCC 724** was also taken into account and the provisions of Section 37 of the Act of 1985 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.

In the present case, the petitioner is in custody since 08.07.2021 and the investigation is complete and challan has been presented and out of 16 prosecution witnesses, only one witness has been examined and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case. All the prosecution witnesses are official witnesses, thus, the question of influencing them does not arise. In the present case, FIR had been registered on 08.07.2021 and the petitioner had been arrested on 08.07.2021 as is apparent from the Arrest Memo dated 08.07.2021 (Annexure P-12) and even the recovery effected from the

petitioner is stated to have been effected at 11:15 pm on 08.07.2021 whereas the consent memo, vide which, ASI Harmesh Kumar had informed the present petitioner about his right to be searched before the Gazetted Officer or the Magistrate, is dated 09.07.2021. It is, thus, apparent that the option as mandated under Section 50 of the Act of 1985 had been given to the petitioner subsequent to the recovery/arrest and thus, there is a prima facie violation of Section 50 of the Act of 1985. The same raises a strong prima facie argument in favour of the petitioner. Moreover, the petitioner is not involved in any other case and thus, keeping in view the law laid down in **Ankush Kumar @ Sonu's** case (Supra), it could be reasonably said that the petitioner is not likely to commit any offence while he is on bail. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the Act of 1985.

Keeping in view the above-said facts and circumstances, 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.

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.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

19.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No