

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(221)

CRM-M-25671-2022

Date of decision: - 06.12.2022

Jagdeep Singh @ Kakku

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.141 dated 07.10.2021, under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (Section 29 of the NDPS Act has been added later on), registered at Police Station Badhni Kalan, District Moga.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 07.10.2021 and the investigation is complete and the challan has already been presented and there are total 10 prosecution witnesses, out of which, none have been examined, thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that in the present case there are arguable points including the point that as per the FIR it has been alleged by the

prosecution that the petitioner was carrying the intoxicant tablets in a transparent polythene bag and thus, the police party could see the same while the petitioner was walking with the said polythene carry bag. It is stated that it is highly unlikely for a person who has to carry contraband, to carry the same in a transparent polythene bag and on the basis of the said point alone, Coordinate Benches of this Court have granted the concession of bail to the accused persons in such cases. Reference has been made to the various orders passed by the Coordinate Benches of this Court i.e., *order dated 02.08.2021 passed in CRM-M-4408-2021 titled 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 also submitted that the allegation against the accused to the effect that he was carrying the intoxicant tablets in a transparent polythene bag, has been levelled by the police in order to avoid the compliance of mandatory provisions of Section 50 of the NDPS Act, which requires the said procedure to be followed before any search is made from the petitioner.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that recovery from the present petitioner falls within the ambit of commercial quantity and thus, bar under Section 37 of the NDPS Act would apply. It has been further submitted by the learned State counsel that the police party had seen that the intoxicant tablets were being carried by the petitioner, since the

polythene bag was transparent and recovery thereafter was effected from the said transparent polythene bag.

This Court has heard learned counsel for the parties and has gone through the paper-book.

A 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

Sd/-

(GURVINDER SINGH GILL)
JUDGE”

A perusal of the said judgment would show that although, in the said case, recovery effected 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 any contraband, would carry the same in a transparent polythene bag inviting the attention of everybody who passes by.

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.*

Xxx xxx”

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.*

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 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

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.

Xxx xxx”

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 as under:-

“xxx xxx

2. Ld. Counsel for the Petitioner relies on a decision of a Co-ordinate 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, a perusal of the FIR would show that even as per the case of the prosecution, the petitioner was carrying intoxicant tablets in a transparent polythene bag and thus, the law laid down in the above said judgments would also apply in the present case. The petitioner has been in custody since 07.10.2021 and the investigation is complete and the challan has already been presented and there are total 10 prosecution witnesses, out of which, none have been examined, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case.

Keeping in view the above said facts and circumstances, this Court is of the opinion that in the present case, there are several arguable points involved, which would be determined during the course of trial and thus, the petitioner is entitled to grant of regular bail. Further, this Court proposes to impose such conditions that would meet 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 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. 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.

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.

December 06, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No