

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-25079-2022(O&M)

Date of decision : 07.07.2022

Sumit Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Chandan Singh Rana, Advocate for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 73 dated 19.06.2020 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station STF Phase-4, District SAS Nagar.

Learned counsel for the petitioner has submitted that in the present case, it is not specifically stated in the FIR as to from whom the recovery of 615 gms. of heroin has been effected. It is further submitted that the petitioner has been in custody since 19.06.2020 and the challan has already been presented and there are as many as 15 witnesses, none of whom have been examined as yet and thus, the trial is likely to take time. It is also submitted that in the present case, there is non compliance of Section 42 of the NDPS Act inasmuch as, the secret information had been taken down by ASI Jaipal Singh whereas the same has been sent by Naresh

Kumar and not by ASI Jaipal Singh. A reference has been made to Section 42 (2) to contend that the phrase “he shall within 72 hours send a copy thereof to the immediate official superior” would indicate that it is the person who had taken down the writing who ought to send the information taken down to the senior officer and thus, there is noncompliance of Section 42 in the present case. It is further submitted that the petitioner is not involved in any other case. It is further submitted that the co-accused Raj Kumar @ Raju has also been granted the concession of regular bail by this Court vide order dated 23.05.2022 and the case of the petitioner is on a similar footing as that of the co-accused.

Learned State counsel, on the other hand, has opposed the present application for regular bail and has submitted that in the present case, there is complete compliance of Section 42 of the NDPS Act inasmuch as, ASI Jaipal Singh had taken down the information and then forwarded the same to Naresh Kumar, who was also working in Special Task Force, Ludhiana and sent it to the higher officer and thus, the intent of Section 42 has been complied with. It is further submitted that the said Naresh Kumar is the Investigating Officer in the present case.

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

The petitioner has been in custody since 19.06.2020 (more than 2 years) and the challan in the present case has been presented and there are as many as 15 prosecution witnesses out of whom, none have been examined yet and thus, the trial is like to take a time. The petitioner is not stated to be the owner of the motorcycle and is also stated to be not involved in any other case. Moreover, the question as to whether Section 42

of the NDPS Act has been complied with or not in the present case would be a matter of debate, which would be finally adjudicated during the course of trial. The co-accused of the petitioner Raj Kumar @ Raju has been granted regular bail by this Court vide order dated 23.05.2022 passed in CRM-M-31715-2022 and the case of the petitioner is on a similar footing as that of the said co-accused.

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:

“ 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.

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 (CrI.) 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 above mentioned 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 pplicant-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. This Court is of the opinion that in the present case, there are several arguable points which have been raised by the learned counsel for

the petitioner and the petitioner has been in custody since 19.06.2020, all the abovesaid factors are sufficient to entitle the petitioner for the concession of regular bail. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

Keeping in view the above said facts and circumstances, moreso the custody period of petitioner and the fact that he is not involved in any other case and also the fact that there are arguable points in the present 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 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 would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

July 07, 2022

Davinder Kumar

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