

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-30560-2021
Date of decision : 26.05.2022

Amritpal Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.J.S.Sandhu, Advocate and
Mr.Navjot Singh, 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.17 dated 27.02.2021 registered under Section 22/61/85 of the Narcotic Drugs and Psychotropic Substances, Act 1985 at Police Station Sadar Rampura, District Bathinda.

Learned counsel for the petitioner has submitted that in the presnt case, the petitioner has been in custody since 27.02.2021 and challan has already been presented and there are 11 prosecution witnesses and none of them have been examined and the petitioner is not involved in any other case. It is further submitted that as per the FIR, the petitioner was stated to be holding a plastic transparent (pardarshi) bag which he had thrown on seeing the police party and had tried to run away but was apprehended by the police on the spot. Learned counsel for the petitioner

16150-2021 dated 19.07.2021 titled as ***Balwinder Singh Vs. State of Punjab*** and on judgment in CRM-M-33733-2020 dated 15.03.2021 titled as ***Manjit Singh Vs. State of Punjab*** alongwith connected matters to contend that in such a situation the question as to whether the petitioner was in conscious possession of the contraband is a debatable issue since the alleged recovery had been made from the plastic bag lying on the ground. Further reliance has been placed 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*** in which it was held that in a case where the accused is stated to have been carrying narcotic drugs in a transparent plastic bag, then the said issue would also be a debatable one as it is highly unlikely that the accused would carry such substances in a transparent polythene and would entitle the petitioner to bail.

Learned State counsel has opposed the present petition for regular bail and has submitted that the police party had seen the petitioner throwing the plastic bag and thus, the question of the petitioner not being in conscious possession of the recovered contraband, does not arise. It is further submitted that recovery in the present case is of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply.

This Court has heard the learned counsel for the parties.

In ***Balwinder Singh's*** case (Supra), a Coordinate Bench of this

Court has held as under:

“Briefly stated, case of the prosecution against the petitioner is that on 04.03.2019 police party headed by ASI Ravinder Singh on patrolling duty were coming to Tehang Octroi via Saiflabad. When they reached near Civil Hospital, Phillour they saw the petitioner coming on foot who on seeing the police party threw one heavy weight black coloured polythene bag and tried to run away. The police apprehended the petitioner and on search as per prescribed procedure recovered 55 intoxicant injections containing Buprenorphine 2 ml each and 55 injections containing Avil 10 ml each from the polythene bag.

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On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession commercial quantity of intoxicant injections. Rigors of Section 37(1)(b) are fully applicable to the case of the petitioner. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In CRM-M-13662-2020 titled as 'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474- 2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRMM6433- 2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018 and CRM-M-16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020 where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the accused, the case was considered to involve question as to whether the accused could be said to be in conscious possession thereof and the accused was granted regular bail.

In 'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020 where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by

Hon'ble Supreme Court.

In the present case recovery of intoxicant injections was allegedly made from polythene bag allegedly thrown on the road side. The case involves debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the polythene bag lying on the road side. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act stand satisfied by due implication. Further, the petitioner is in custody since 04.03.2019. Prosecution evidence is yet to be recorded. The trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.”

A perusal of the above judgment would show that although in the said case also, the recovery was of commercial quantity but since the recovery of the polythene bag therein was also after the same had been thrown, thus it was observed that it was a debatable issue as to whether the petitioner could be said to be in conscious possession of the same. It was also observed that the rigors of Section 37(1) (B) of the NDPS Act stand satisfied vide due implication.

Even in **Manjit Singh's** case (*supra*), a Coordinate Bench of this Court while dealing with the case in which the allegation was that the

petitioner therein was holding a polythene bag and on seeing the police party, had thrown the said polythene bag, had observed that it was not possible to conclude that the recovery was made from the conscious possession of the petitioner therein. The said case was also a case of commercial quantity.

Moreover, it has also been repeatedly held by various Courts that it is highly unlikely that the person who is carrying such substances, would carry the same in a transparent plastic bag. The said issue would also raise a debatable issue which would finally be adjudicated during the course of the trial. Moreover, the petitioner has been in custody since 27.02.2021 and the challan has already been presented and there are 11 prosecution witnesses and none of them have been examined and the petitioner is stated to be not involved in any other case.

Accordingly, 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.

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

May 26, 2022
Davinder Kumar

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