

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

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CRM-M-33292-2021 (O&M)

Decided on : 08.02.2022

Kashmir Singh and another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Mr. Karandeep S. Sidhu, Advocate
for the petitioners.

Mr. Karanbir Singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

CRM-41573-2021

For the reasons mentioned in the application, same is allowed subject to all just exceptions and Annexure P-2 is taken on record.

CRM-44043-2021

For the reasons mentioned in the application, same is allowed subject to all just exceptions and Annexures P-3 to P-5 are taken on record.

Main Case

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 25

dated 28.03.2021 under Sections 22 and 29 of NDPS Act (No. 61) 1985, registered at Police Station Khui Khera, District Fazilka.

Learned counsel for the petitioners has submitted that even as per the prosecution version, the alleged recovery has been made from the plastic bag which was lying on the ground. It has been argued that in such a situation, the petitioners cannot be stated to be in conscious possession of the contraband. Reliance for the said proposition has been placed upon a decision of a Coordinate Bench of this Court in CRM-M-16150-2021 dated 19.07.2021 titled as Balwinder Singh Vs. State of Punjab and on judgement in CRM-M-33733-2020 dated 15.03.2021 titled as Manjit Singh Vs. State of Punjab alongwith connected matters. It is further submitted that the petitioners are old persons aged 65 years and 62 years respectively and have never been involved in any other criminal case. It is submitted that the petitioners has been in custody since 28.03.2021 and there are 17 witnesses out of none have been examined and the trial is likely to take time moreso, in view of the present COVID-19 pandemic situation.

Learned counsel for the petitioners has also relied upon a judgement, reported as 2019(4) R.C.R. (Criminal) 714 titled as Ravi Kumar Vs. State of Punjab.

Learned State counsel on the other hand has submitted that although, in the present case, the plastic bag had been recovered from the ground but on seeing the police party, the son of the petitioners, who was driving the motorcycle, stopped the motorcycle, threw the said

plastic bag and managed to flee from the spot. However, the petitioners who were the pillion riders on the said motorcycle, were nabbed by the police officials and arrested on the spot. The other facts, as stated by learned counsel for the petitioners, have not been disputed by learned State counsel.

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 stands satisfied vide due implication.

Even in Manjit Singh's (supra) case, a Coordinate Bench of this Court dealt with the case in which the allegation was that the petitioner therein was holding a polythene bag and on seeing the police party, he threw the said polythene bag. It was 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.

Further, in the present case, it is the son of the petitioners who had thrown the plastic bag, which was found fallen on the ground

and it is stated that the said person had run away from the spot. The petitioners are old persons aged 65 years and 62 years respectively and have never been involved in any other criminal case and have been in custody since 28.03.2021 and there are 17 witnesses out of which none have been examined and thus, the trial is likely to take time, moreso in view of the present COVID-19 pandemic situation.

Since the issue, whether the petitioners could be stated to be in conscious possession, is debatable, thus, as per the judgments of the Coordinate Bench, the bar under Section 37 would not apply.

Without commenting on the merits of the case and keeping in view the fact that the petitioners have been in custody for more than ten months and the trial of the case is likely to take a long time, the petitioners are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to them not being required in any other case.

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

Accordingly, the present petition is allowed.

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 application.

February 8th, 2022

(VIKAS BAHL)
JUDGE

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