

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(218)

CRM-M-30440-2022(O&M)
Date of decision: - 10.11.2022

Gurmeet Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Karandeep Singh Sidhu, Advocate,
for the petitioner.

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

VIKAS BAHL, J. (ORAL)

This is the second petition under Section 439 Cr.P.C. to grant regular bail to the petitioner in FIR No.152 dated 14.09.2021, registered under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Vairo Ke, District Fazilka.

Learned counsel for the petitioner has submitted that the first bail petition of the petitioner was dismissed as withdrawn on 19.05.2022 with liberty to file a fresh petition after giving proper and complete particulars and the present petition has been filed after giving full and complete particulars and thus, is in effect, the present petition is the first petition for grant of regular bail. It is further submitted that the petitioner has been in custody since 14.09.2021 and out of the 15 prosecution witnesses, only 2 have been examined, thus, the trial is likely to take time

and that the petitioner is not involved in any other case. It is further submitted that in the present case, the alleged recovery cannot be stated to have been effected from the conscious possession of the present petitioner, inasmuch as, even as per the prosecution case, a white polythene bag was held by Binder Singh (co-accused) and not by the present petitioner while both of them were seen walking on foot. It is also submitted that the allegations which have been levelled in the FIR are that the said Binder Singh had thrown the white polythene bag and the same was picked up by the ASI, in which the intoxicant tablets had been found. It is stated that in such a situation, it cannot be said that the recovery was effected from the conscious possession of the petitioner and has relied 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', to contend that in such a situation, it is matter of debate as to whether the petitioner could be stated to be in conscious possession of the narcotic tablets in question or not.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that as per the prosecution case, the co-accused of the petitioner, namely, Binder Singh, on seeing the police party, threw a white coloured polythene bag, which contained the intoxicant tablets and the petitioner was also walking with the said Binder Singh and thus, it cannot be stated that the recovery was not from the conscious possession of the petitioner. It is also submitted

that the recovery in the present case is of commercial quantity. Learned State counsel has produced the custody certificate as per which the custody period as well as the fact that the petitioner is not involved in any other case, stands reaffirmed.

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

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 'Niranjana 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 effected was of commercial quantity but, since the recovery of the polythene bag therein was also after the same had been thrown on the ground, thus, it was observed that it was a debatable issue whether the petitioner could be said to be in conscious possession of the narcotic or not. It was also observed that the rigors of Section 37(1) (B) of the NDPS Act stood satisfied by due implication.

Even in *Manjit Singh's (supra) case*, a Coordinate Bench of this Court dealt with a 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 effected was made from the conscious possession of the petitioner therein or not. The said case was also a case of commercial quantity.

In the present case, the petitioner has been in custody since 14.09.2021 and the challan has already been presented and there are total 15 prosecution witnesses, out of which only two have been examined and thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case. All the prosecution witnesses are stated to be official witnesses, thus, the question of influencing them does not arise. Moreover, it was co-accused of the petitioner Binder Singh, who as per the prosecution case was holding the polythene bag, which was thrown by the said Binder Singh on seeing the police party and was thereafter picked up from the ground by the police. The petitioner was neither holding the bag nor the recovery has been effected from him. The petitioner thus, has a strong arguable point on the aspect of his not being

in conscious possession of the intoxicant tablets which have been recovered in the present case, however, the same would be adjudicated finally during the course of the trial. Moreover, the petitioner is not involved in any other case and thus, keeping in view the judgment passed in “Ankush Kumar @ Sonu Vs. State of Punjab”, **reported as 2018(4) RCR (Criminal) 84**, which has been upheld by the Hon'ble Supreme Court, it could be reasonably said that the applicant-appellant would not indulge in criminal activities in the future.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is directed to be released on regular 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.

All pending application(s), if any, stand disposed of in view of the abovesaid order.

November 10, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes