

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(211)

CRM-M-35532-2021

Date of decision: - 20.04.2022

Chetan Verma @ Rahul Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sahil Puri, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a first bail application under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.294 dated 16.11.2019, registered under Sections 21/61/85 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station City Phagwara, District Kapurthala.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case, inasmuch as, on the date of the alleged occurrence on 16.11.2019, the petitioner was not even in the City of Phagwara, where the alleged incident had taken place and in fact, he had gone to Amritsar to visit Shri Harminder Sahib Gurudwara and had stayed there from 16.11.2019 to 17.11.2019 in

Maharaja Guest House near Golden Temple and regarding the same, he has placed on record the copy of bills dated 16.11.2019. It is further submitted that even as per the FIR, the petitioner was not apprehended at the spot in spite of the fact that as per the prosecution version, he was stated to be walking, whereas, the police officials were riding a private bike. It has also been submitted that it is highly unlikely that a person would be able to escape on foot when the police officials were riding a motorcycle. It is further submitted that the FIR in the present case has been registered during evening hours i.e., at 20.59 hours in the month of November, 2019, which is a winter month, during which it gets completely dark at that particular hour. It is also submitted that as per the FIR, the petitioner was identified by ASI Raj Kumar without there being any prior secret information and in spite of the fact that the present petitioner is a resident of village Khothran, Police Station Behram, District SBS Nagar, whereas, the FIR has been registered in City Phagwara and the incident had also taken place at Peepa Rangi Mohalla Phagwara Chowk. It is also submitted that nothing has been mentioned in the FIR as to how and on what basis ASI Raj Kumar, in the darkness of a winter night, has been able to identify the present petitioner. It is submitted that the petitioner has been in custody since 29.10.2020 and there are 11 prosecution witnesses, none of whom have been examined and thus, the trial is likely to take time.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery in the present case is of commercial quantity and the present petitioner is also

involved in two other cases.

Learned counsel for the petitioner in rebuttal has relied upon the judgment of Hon'ble Supreme Court in “**Maulana Mohd. Amir Rashadi vs. State of U.P. and another**”, ***reported as 2012 (2) SCC 382***, to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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

Perusal of the FIR would show that the petitioner was not apprehended at the spot and thus, it would be a matter of debate to be decided during the course of trial as to whether the petitioner could be stated to be in conscious possession of the narcotic drug or not. The FIR has been registered in the month of November, 2019 at 20.59 hours and as per the allegations in the FIR, it was ASI Raj Kumar, who identified the petitioner. Nothing has been stated in the FIR so as to suggest that the said ASI Raj Kumar was familiar with the petitioner. Further, it has been stated that the police officials were on a motorcycle, whereas, the present petitioner was walking and thus, it would also be a matter of debate,

which would be finally adjudicated at the time of trial, as to how the petitioner managed to escape under the said circumstances. In the month of November, at 20.59 hours, there is almost complete darkness and thus, the issue as to whether the petitioner was duly identified and is involved in the present case, would again be a debatable issue. The petitioner has been in custody since 29.10.2020 and there are 11 prosecution witnesses, none of whom have been examined and thus, the trial is likely to take time. Moreover, all the witnesses are stated to be official witnesses, thus the question of influencing them, does not arise.

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, granted bail/suspension of sentence. Some of the said judgments are being discussed hereinafter. In Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina v. Union of India**, the Hon'ble Supreme Court in a case where allegation in the chargesheet was with respect to 120 kg of contraband i.e. "ganja", thus, being of commercial quantity, was pleased to grant bail after setting aside the order of the High Court where the said application for grant of regular bail had been rejected.

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.

Further, vide order dated 25.02.2021 in CRM-M-20177-2020, a 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 (Crl.) 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 v. National Investigating Agency and another**, granted suspension of sentence in a case where the recovery was of commercial quantity. In the abovementioned 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**; (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 applicant-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**; 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.

Keeping in view the fact that there are several arguable points, *inter alia*, the identification of the petitioner and also the question whether the petitioner could be stated to be in conscious possession of the

narcotic drug when he was not even apprehended at the spot and also keeping in view the period of custody of the petitioner and also the law laid down in the above-said judgments and all the other 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.

Accordingly, 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.

April 20, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes