

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-31481-2022(O&M)

Date of decision : 16.09.2022

Lakhvir Singh alias Lakhi

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Arihant Goyal, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, 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.47 dated 11.07.2021 registered under Sections 21, 22, 25, 29, 61/85 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short "NDPS Act") at Police Station Rureke Kalan, District Barnala.

Learned counsel for the petitioner has submitted that in the present case, there is a violation of mandatory provisions of law. It has been submitted that the FIR in the present case has been registered on 11.07.2021 and perusal of the report under Section 57 of the NDPS Act (Annexure P-6) would show that the report was prepared on 15.07.2021 but the same is stated to have been signed by the Deputy Superintendent of Police, S.D. Tapa on 10.07.2021. For the said purpose, reference has been made to the vernacular wherein, the said date has also been mentioned as 10.07.2021. It

manipulated. It has also been argued that as per the report dated 11.07.2021 under Section 42 of the NDPS Act (Annexure P-3), it has been stated that the report under Section 42 of the NDPS Act is being presented for information and is signed by SI Kuldeep Singh, CIA Barnala, dated 11.07.2021 and the same is being sent to SI Paramjit Singh and not to any senior officer as is required under Section 42(2) of the NDPS Act. It has been submitted that the same has been sent from one Sub Inspector to another Sub Inspector and that too, belonging to two different police stations, whereas the provision of Section 42(2) of the NDPS Act specifically requires that after noting down the information in writing, the officer concerned shall, within 72 hours, send its copy to the immediate superior officer. It has also been submitted that the immediate superior officer would be either the Officer Incharge of CIA staff or the DSP Tapa or the SSP, since the report has been prepared by Sub Inspector Kuldeep Singh, CIA, Barnala. It has further been submitted that in the report under Section 42 of the NDPS Act, although in the end it is mentioned that case be registered and the concerned Investigating Officer be informed but the FIR number has been mentioned along with date and sections and it has been submitted that the same also shows that the said document have been prepared subsequent to the registration of the FIR. Reliance in this regard has been placed upon the judgment of the Division Bench of this Court in ***Didar Singh @ Dara vs. The State of Punjab***, reported as ***2010(3) RCR (Criminal) 337***. It has been stated that in the present case, there is a violation of Section 50 of the NDPS Act. It has also been stated that the petitioner Lakhvir Singh @ Lakhi has been in custody since 12.07.2021. It has been submitted that co-accused of the petitioner namely Sarban Singh

@ Lakhi @ Sarwan Kumar, Gagandeep Singh @ Gaggu, Gurpreet Singh and Rajveer Singh @ Deol @ Ravivinder Singh @ Rajdeep Singh have already been granted regular bail by this Court vide order dated 02.12.2021 passed in CRM-M-49251-2021 and order dated 30.05.2022 passed in CRM-M-2266-2022, CRM-M-9687-2022 and CRM-M-38127-2021. It has been stated that there are 16 prosecution witnesses and none of them have been examined, thus, the trial is likely to take time.

Learned State counsel has opposed the present petitions for regular bail and has submitted that in the present case, petitioner-Lakhvir Singh @ Lakhi was named in the secret information and even the recovery of 295 grams of heroin has been effected from the petitioner Lakhvir Singh @ Lakhi. It has further been submitted that Gurpreet Singh and Rajveer Singh @ Deol @ Ravivinder Singh @ Rajdeep Singh have been implicated on the basis of disclosure statement of the co-accused and from them also, in pursuance of the disclosure statement, recovery to the effect of 35 grams of heroin was effected. It has also been submitted that in the present case, Section 50 of the NDPS Act would not stand violated as the recovery with respect to the heroin has not been effected from personal search and nothing has been recovered from the personal search. It has also been submitted that personal search was made for the purpose of conducting jamatalashi and not for the purpose of recovery of narcotic drugs and the same is a matter of procedure. It has further been pointed out that as far as non-compliance of Section 42 of the NDPS Act is concerned, the report has been sent by SI Kuldeep Singh to SI Paramjit Singh, who was the SI SHO of the Police Station and the SHO of the Police Station is superior officer to the Sub Inspector of CIA Staff. It has also been stated that in the present case,

Section 42 of the NDPS Act is not applicable as the search is not from a private place but is from a public place. It is further submitted that the petitioner is involved in one more case.

Learned counsel for the petitioner 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 while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. 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 has perused the paper book.

Petitioner Lakhvir Singh @ Lakhi has been in custody since 12.07.2021. Challan in the present case has already been presented and there are 16 prosecution witnesses and none of them have been examined, thus, the trial is likely to take time. In the present case, with respect to the question whether there is compliance of Sections 42 and 50 of the NDPS Act, the same is a matter of debate, which would be finally adjudicated during the course of trial. Further, the fact as to how the DSP had seen the report under Section 57 of the NDPS Act on 10.07.2021 even though, the FIR was registered on 11.07.2021 whereas the report under Section 57 of

considered finally at the time of trial. Further, even a perusal of the report under Section 42 of the NDPS Act (Annexure P-3) would also show that it has been specifically mentioned in the same that “case be registered and concerned investigating officer be informed.” Thus, when the report under Section 42 of the NDPS Act dated 11.07.2021 was prepared, the FIR had not been registered whereas, the first page of the said report would show that FIR number, date of FIR as well as all the sections, have been mentioned in report dated 11.07.2021 (Annexure P-3). In **Didar Singh @ Dara's** case (supra), the Division Bench of this Court has held as under:-

*“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In **Ajay Malik & Ors. v. State of U.T. Chandigarh, 2009(3) RCR (Crl.) 649**, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e. either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.*

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32. *In view of the aforesaid discussion, the appeal is allowed and the impugned judgment of conviction and order of sentence passed by the Judge, Special Court, Amritsar are set aside. The appellant, who is in custody, be set at liberty forthwith if not required in any other case.”*

The above said facts would thus, give rise to strong arguable points in favour of the petitioner.

With respect to the bar under Section 37 of the NDPS Act, it would be relevant to note that some judgements of the Hon'ble Supreme Court and the coordinate Benches of this Court are noted 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 coordinate 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***; 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.

of the petitioner, this Court is of the opinion that the petitioner deserves 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 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 they are 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.

Pending miscellaneous applications stand disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

September 16, 2022
Davinder Kumar

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