

CRM-M-35051-2022

Date of Decision : 17.10.2022

PRABHDEEP SINGH ALIAS PRABH

...Petitioner

Versus

STATE OF PUNJAB

....Respondent

Coram : Hon'ble Mr. Justice B.S. WaliaPresent : Mr. Sidhant Varmani, Advocate for the petitioner.
Mr. Rajesh Mehta, Addl. A.G., Punjab.

B.S. Walia, J. (Oral).

[1] Prayer in the third petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.60 dated 03.04.2019 registered under Section 22, NDPS Act, 1985 at Police Station 'B' Division, Amritsar.

[2] Learned Counsel contends that the petitioner has no criminal record except for the instant FIR in which the alleged recovery is of 950 capsules (weighing 608 grams of Tramadol Hydrochloride salt), the petitioner is in custody since 03.04.2019, Challan has been presented whereafter the petitioner is in judicial custody w.e.f 17.02.2020, the petitioner was on interim bail till receipt of report of Forensic Science Laboratory whereafter the petitioner surrendered before the learned Trial Court, Charges were framed on 13.03.2020 and out of 11 prosecution

witnesses, only 02 have been examined till date, today the matter was adjourned by the learned trial Court to 17.11.2022 as no prosecution witness was examined.

[3] Learned counsel further contends that the earlier petition i.e. CRM-M No.28706 of 2020 was dismissed as withdrawn vide order, Annexure P/1 dated 07.10.2020 with liberty to the petitioner to file an application for regular bail before the learned trial Court but the same was dismissed vide order, Annexure P/5 dated 29.10.2020 on the ground of recovery of commercial quantity of contraband. Learned counsel further contends that thereafter the petitioner again approached this Court vide CRM-M No.36988 of 2020 which was dismissed as withdrawn vide order, Annexure P/2 dated 07.09.2021 with the direction to the learned trial Court to expedite the trial by examining material witnesses in accordance with law as expeditiously as possible. Learned counsel contends that despite directions of this Court dated 07.09.2021 (Annexure P/2) no witness has been examined after the examination of the two prosecution witnesses on 30.03.2020. Learned Counsel further contends that the petitioner is 26 years old, has old parents to support, besides, there is no other earning member in the family nor any one to provide for and look after his old parents.

[4] Learned Addl. A.G. on instructions from IO Sukhwinder Singh frankly concedes that the petitioner is in custody since 03.04.2019, he was released on interim bail for want of report from the Forensic Science Laboratory and on receipt thereof, the petitioner surrendered, that out of 11 prosecution witnesses only 02 were examined on 30.03.2020 whereafter, no other prosecution witness has been examined and today the case has been adjourned by the learned trial Court to 17.11.2022.

Learned Addl. A.G.also concedes that earlier two petitions for regular bail (i.e. CRM-M No.28706 of 2020 and CRM-M No.36988 of 2020) were dismissed as withdrawn vide orders Annexures P/1 and P/2 dated 07.10.2020 and 07.09.2021 respectively.

[5] Learned counsel for the petitioner relies upon the decision of a co-ordinate Bench of this Court in ***CRM-M No.19648 of 2021 in case titled as Gaurav Gandhi vs. State of Punjab decided on 29.08.2022*** as well as the decision in ***CRM-M No.49706 of 2021 in case titled as Jagtar Singh @ Jagga vs. State of Punjab, decided on 11.07.2022.***

[6] Learned counsel for the petitioner contends that the recovery in **Gaurav Gandhi's case (Supra)** was 600 gms of Heroin and the petitioner therein was allowed regular bail on the second bail application by taking into account long period of custody i.e. two years, one month and twenty nine days as also on account of no prosecution witness having been examined, by relying upon the decision of Hon'ble the Supreme Court in ***CRA No.245 of 2020 in case titled as Chitta Biswas @ Subhas vs. The State of West Bengal decided on 07.02.2020 and CRA No.1169 of 2022 in case titled as Gopal Krishna Patra @ Gopalrusma vs. Union of India, decided on 05.08.2022 as well as Special Leave to Appeal (Crl.) No.5769 of 2022 in case titled as Nitish Adhikary @ Bapan vs. The State of West Bengal, decided on 01.08.2022.***

Learned Counsel contends that the recovery in **Chitta Biswas's case (Supra)** was also of commercial quantity but the appellant therein was released on bail on account of long period of custody i.e. one year and seven months approximately. Relevant extract of the aforesaid decision is reproduced as under:-

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019. The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985. According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."

[7] Likewise in **Nitish Adhikary's case (Supra)** as well as in **Gopal Krishna Patra's case (Supra)**, the accused therein were released on regular bail solely on account of long period of incarceration. However, the aforementioned decisions do not indicate whether the recovery in the said cases was of commercial quantity.

decision of **Hon'ble the Rajasthan High Court** in case titled as **Ganesh Raj vs. State of Rajasthan and others, 2005 (3) RCR (Crl.) 30** to contend that the accused has a right to file second bail application on the ground of delayed trial. Relevant extract of the same is reproduced as under:-

“Speedy trial is a Constitutional right of the accused provided to him by Article 21 of the Constitution. If first application of the accused who is in custody is dismissed on merits and the trial is delayed, the accused has a right to make second bail application on the ground of delayed trial Section 439 relates to Constitutional right of the accused whereas Section 438 to his statutory right. The provisions of Section 438 should not be put to abuse at the instance of unscrupulous accused.”

[9] Learned counselby referring to a decision in **Jagtar Singh @ Jagga's case (Supra)** contends that the petitioner therein had been in custody for close to two years and although charges had been framed but out of 11 prosecution witnesses not even a single witness had been examined, that the recovery from the petitioner therein was of 860 intoxicant tablets of salt 'Alprazolam' and although the recovery was of commercial quantity but the petitioner therein was granted bail by relying upon the decisions in **Chitta Biswas's case (Supra)** and **Vipan.Sood vs. State of Punjab and another, CRM-M No.20177 of 2020 decided on 25.02.2021** in which recovery was of 3.8 kgs charason account of said petitioner having been in custody for more than one year and seven months as also by relying upon the decision in **Amritpal Singh vs. State of Punjab, CRM-M No.53334 of 2021 decided on 07.04.2022** in which reference was made to the decision of a co-ordinate Bench in **Ankush Kumar @ Sonu vs. State of Punjab, 2018 (4) RCR (Crl.) 84** wherein

Section 37 of the NDPS Act was considered *inextenso* and bail was granted in a case involving recovery of commercial quantity of contraband. Relevant extract of the decision in **Ankush Kumar @ Sonu's case (Supra)** 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.”

[10] Learned counsel for the petitioner further contends that 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 Hon'ble the Supreme Court. Learned counsel further contends that in **Amritpal Singh's case (Supra)**, reliance was also placed on the decision in **VipanSood's case (Supra)** as also on the decision of Hon'ble the Supreme Court upholding the said decision,

involving commercial quantity of 3.8 kgs of charas, on account of the petitioner therein being in custody for a period of one year and seven months. The order of the High Court was upheld by Hon'ble the Supreme Court vide order dated 24.08.2021 in SLP (CrI.) No.5852 of 2021. Learned counsel further contends that in ***Amit Singh @ Moni vs. Himachal Pradesh, CRA No.668 of 2020***, Hon'ble the Supreme Court vide order dated 12.10.2020 granted regular bail to the appellant therein in a case involving recovery of 3285 grams of charas from a vehicle occupied by five persons including the appellant therein on the ground that although seven witnesses had already been examined in the trial, yet seven more witnesses were yet to be examined, the last witness was examined in February 2020 whereafter there was no further progress in the trial because of the COVID-19 pandemic situation besides the appellant was in custody since more than 2 years and 07 months of actual custody and the trial was likely to take a long period of time to conclude.

[11] Learned counsel for the petitioner further contends that in ***Ajay Kumar @ Nanu vs. State of Punjab and other connected matters***, a Co-ordinate Bench of this Court 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 of contraband while imposing the condition therein by granting bail as was incorporated in para No.21 of the said judgment. The same is reproduced 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.”

[12] Reference has also been made by learned counsel for the petitioner to a decision of Hon’ble the Division Bench of this Court dated 31.08.2021 in **CRM-8262 of 2021 in CRA-S-3721-SB of 2015** in case titled as **Harpal Singh vs. National Investigating Agency and another** wherein suspension of sentence was allowed in a case where the recovery was of a commercial quantity on the basis of the right vested with the accused/convict under Article 21 of the Constitution of India for a speedy trial. Learned counsel for the petitioner further refers to the decision of ***Hon’ble the Supreme Court in State (NCT of Delhi) vs. Lokesh Chadha (2021) 5 SCC 724*** wherein Hon’ble the Supreme Court after considering the scope of Section 37 of the NDPS Act was pleased to suspend the sentence of the applicant after primarily considering the period of custody as also the fact that the appeal was not likely to be heard in the near future.

[13] Per contra learned Addl. A.G., Punjab contends that the recovery is of commercial quantity and directions can be issued to the learned trial Court to expedite the trial.

[14] I have considered the submissions of learned counsel.

[15] Admittedly, the petitioner is in custody since 03.04.2019 i.e. for a period of close to 02 years and 09 months after excluding the period of interim bail during which report was awaited from the Forensic Science Laboratory and out of 11 prosecution witnesses only 02 were examined on 13.03.2020 whereafter no prosecution witnesses have been examined and today the case has been adjourned to 17.11.2022. It also

needs noticing here that the prosecution witnesses have not turned up to give evidence despite the issuance of bailable warrants on a number of dates. The petitioner does not have criminal record other than the instant case and the trial is likely to take considerable period of time. Accordingly, in view of examination of only two prosecution witnesses that too in March 2020, consequential denial of the right of the petitioner-accused to a speedy trial despite directions by this Court vide order, Annexure P/2 dated 07.09.2021, and the resultant entitlement to bail in the light of decision of Hon'ble the Division Bench of this Court in Harpal Singh's case, of Hon'ble the Supreme Court in Lokesh Chadha's, Amit Singh @ Moni and Chitta Biswa's case, besides in view of the decision of a co-ordinate Bench of this Court in Gaurav Chadha's case, Jagtar Singh @ Jagga's case, Ankush Kumar @ Sonu's case, Ajay Kumar @ Nanu's case, besides, Vipin Sood's case as upheld by Hon'ble the Supreme Court as also the other judgments referred to above, the instant petition is allowed and the petitioner ordered to be released on regular bail during the pendency of the trial, subject to his furnishing bail / surety bonds to the satisfaction of the learned CJM / Trial Court / Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also abide by the following conditions:-

- i). The petitioner will not tamper with the evidence during the trial.
- ii). The petitioner will not pressurize / intimidate the prosecution witness(s).
- iii). The petitioner will appear before the trial Court on the date(s) fixed, unless personal presence is exempted.
- iv). The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.

V). 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.

It is made clear that in case of breach of any of the above conditions, the prosecution shall be at liberty to seek cancellation of bail granted to the petitioner. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the instant order which are only for the purpose of adjudicating the present bail application. Needless to mention the petitioner shall also remain present before the learned trial Court on each and every date and in case of inability to attend the court, would move appropriate application for exemption well in time which would be considered and decided by the learned trial Court in accordance with law.

[16] Petition allowed with the aforementioned directions.

(B.S. Walia)
Judge

17.10.2022
'Amit'

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