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

CRM-M-36677-2021 (O&M)

Date of decision : 07.03.2022

Jasveer Singh @ Jassi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kirat Pal Dhaliwal, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

CRM-4264-2022

Application is allowed, as prayed for.

Annexures P-5 to P-8 are taken on record, subject to all just exceptions.

Main case

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.26 dated 17.06.2021 registered under Sections 15/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Mehal Kalan, Tehsil and District Barnala.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated in the case

inasmuch as a perusal of the FIR would show that it had been alleged that a Secret Informer had given secret information at 11:00 pm to the effect that the petitioner, alongwith another person, was selling poppy husk and, thereafter, the recovery of 52 kg of poppy husk each from the petitioner and co-accused was effected . It is further submitted that the said version in the FIR is false inasmuch as the present petitioner was forcibly taken from his house at around 04:30 pm on 16.06.2021 by respondent No.4 (SHO Amrik Singh) alongwith SI Satnam Singh, ASI Jarnail Singh, ASI Gursimranjit Singh, ASI Kiranjit Singh, HC Gurpreet Singh and PHC Sheer Singh. It is argued that the said police officials had entered the house of the petitioner without any search or arrest warrants and after having taken the petitioner in custody had thereafter, sought money from the father of the petitioner and subsequently, falsely implicated the present petitioner. It is further argued that the Village Panchayat had installed the CCTV cameras in the village covering the entire village and the said illegal action of the police was duly recorded in CCTV camera and the video regarding the same in the form of a “Compact Disc” has also been attached as Annexure P-2, alongwith the present petition. It is contended that in the present case, the alleged recovery effected from the present petitioner is of 26 kg of poppy husk and if taken together from both i.e. petitioner and co-accused, a total of 52 kg of poppy husk has been recovered, which is only marginally higher than the commercial quantity i.e. 50 kg. It is further contended that the petitioner has been in custody since 16.06.2021 and there are as many as 15 prosecution

witnesses, out of which, none have been examined as yet and thus, the conclusion of the trial is likely to take time moreso, in view of the present COVID-19 pandemic. It is also submitted that all the prosecution witnesses are police officials and thus, the question of influencing them, does not arise.

Notice of motion.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of regular bail to the petitioner and has submitted that the said allegations which have been levelled by the petitioner against the police officials, cannot be taken on face value. It is further submitted that the petitioner is involved in four more cases.

Learned counsel for the petitioner, in rebuttal to the abovesaid argument, has submitted that the petitioner has been acquitted in all the said four cases.

This Court has heard the learned counsel for the parties and has perused the paper book.

As per the FIR, the Secret Informer had given a secret information to the police officials at 11:00 pm and it is thereafter that the alleged recovery of 26 kg of poppy husk each from the petitioner and the co-accused (total 52 kg of poppy husk) was effected. It is the case of the petitioner that the petitioner was in fact, taken forcibly from his house on 16.07.2021 at around 04:30 pm by respondent No.4 (SHO Amrik Singh)

alongwith SI Satnam Singh, ASI Jarnail Singh, ASI Gursimranjit Singh, ASI Kiranjit Singh, HC Gurpreet Singh and PHC Sheer Singh, who had forcibly entered the house of the petitioner without any search or arrest warrants and the petitioner has been falsely implicated in the present case and with respect to the same, there is a video footage which had been recorded in the CCTV camera installed by the Village Panchayat. The question as to whether the petitioner has been falsely implicated or not and authenticity of the said video footage, would be considered during the course of trial. The petitioner is stated to be in custody since 16.06.2021 and even the recovery which has been effected from the petitioner and co-accused is 52 kg of poppy husk, which is marginally higher than the commercial quantity, and in the present case, challan has already been presented and there are 15 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of the trial is likely to take time moreso, in view of the present COVID-19 pandemic and the said 15 prosecution witnesses are stated to be police officials. The petitioner has been acquitted in all the four other cases, in which, he was made as an accused.

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, there 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 Coordinate 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. This Court feels that in the present case, there are arguable points involved in the case and even the custody of the present petitioner is substantial.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate, subject to his 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, 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 application.

07.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No