

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(227)

CRM-M-33898-2022

Date of decision: - 01.09.2022

Mohd. Nisar @ Happy

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. G.S. Sandhu, Advocate,  
for the petitioner.

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

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VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.104 dated 03.08.2021, under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, registered at Police Station City-1, Malerkotla, District Malerkotla.

Learned counsel for the petitioner as submitted that the petitioner has been in custody since 03.08.2021 and there are as many as 20 prosecution witnesses and none of them have been examined and even the charges have not been framed and thus, the trial is likely to take time. It is also submitted that the petitioner is not involved in any other case. Learned counsel for the petitioner has further submitted that in the present case, as per the version given in the FIR, the present petitioner was the

person who was the pillion rider and co-accused of the petitioner, namely, Vaseem Iqbal was the person who was riding the motorcycle. It is argued that it is case of the prosecution that when the petitioner and co-accused saw the police, they tried to turn back the motorcycle and the petitioner had thrown a polythene bag on the ground on account of which, strips of intoxicant tablets got scattered on the road and thereafter, the police apprehended the petitioner and the person who was driving the motorcycle. It is also submitted that co-accused of the petitioner, namely, Vaseem Iqbal has already been granted the concession of regular bail, vide order dated 20.07.2022 passed in CRM-M-45927-2021 and the case of the present petitioner is on a similar footing as that of said Vaseem Iqbal. It is contended that from the abovesaid fact, it is apparent that the alleged recovery had been effected from the ground and on the aspect as to whether in such a situation, it could be stated that the petitioner was in conscious possession of the contraband or not, the petitioner has relied upon the 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 judgment in CRM-M-33733-2020 dated 15.03.2021 titled as '**Manjit Singh Vs. State of Punjab**', alongwith connected matters and also relied upon a judgment reported as 2019(4) RCR (Criminal) 714 titled as '**Ravi Kumar Vs. State of Punjab**'.

Learned State counsel has opposed the present application for regular bail and has submitted that it was in the presence of the police party that the petitioner had thrown the cream and red coloured bag on the ground, due to which the intoxicant tablets got scattered on the road and

thus, it cannot be said that the present petitioner was not in conscious possession of the intoxicant tablets.

This Court has heard learned counsel for the parties and has perused 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 'Niranjan 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, the recovery effected was of commercial quantity but, since the recovery was also effected 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 substance 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.

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 above-mentioned 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.

In the present case, the petitioner has been in custody since 03.08.2021 and the challan has already been presented and there are as many as 20 prosecution witnesses and none of whom have been examined and since, even the charges have not been framed, thus, the trial is likely to take time and the petitioner is not involved in any other case. The question as to whether the recovery of the intoxicant tablets which were scattered on the road can be considered to be recovery effected from the conscious possession of the petitioner or not, would be a matter of debate, which would finally be adjudicated during the course of the trial. The co-accused of the petitioner, namely, Vaseem Iqbal has already been granted the concession of regular bail by this Court, vide order dated 20.07.2021, passed in CRM-M-45927-2021 and the case of the petitioner is on a similar footing as that of the said Vaseem Iqbal. Moreover, this Court

proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to her 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 she is accused of, or for commission of which she 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.

September 01, 2022  
naresh.k

( VIKAS BAHL )  
JUDGE

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|----------------------------|--------|
| Whether reasoned/speaking? | Yes/No |
| Whether reportable?        | Yes/No |