

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(209)

CRM-M-38961-2021 (O&M)

Date of decision: - 08.07.2022

Sukhwinder Kaur

....Petitioner

Versus

State of Punjab

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rahul Arora, Advocate  
for Mr. Raman Goklaney, Advocate, for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

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VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail in FIR No.88 dated 08.07.2021, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Arniwala, District Fazilka.

Learned counsel for the petitioner has submitted that in the present petition, no recovery has been effected from the present petitioner and even as per the prosecution version, the said recovery has been effected from the husband of the petitioner. It is also submitted that the petitioner is not involved in any other case and that she is a lady and has a seven year old daughter to take care of. It is further submitted that the petitioner has been in custody since 08.07.2021 and out of the total 16 prosecution witnesses, only one has been examined and thus, the trial is likely to take time. It is also submitted that all the witnesses are official witnesses, thus, the question of them influenced by the petitioner would

not arise.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the present petitioner was also also walking with her husband (co-accused) before they were both apprehended at the spot and thus, it cannot be said that the petitioner was not in conscious possession of the recovered intoxicant tablets. It is further submitted that the recovery from the husband of the present petitioner is of commercial quantity and the bar under Section 37 of the NDPS Act, would be attracted and thus, the petitioner does not deserve the concession of regular bail.

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

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity has been effected, the Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the custody undergone by the accused in 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.

In the present case, the petitioner is in custody since 08.07.2021 and there are 16 prosecution witnesses, only one has been examined and thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case and all the prosecution witnesses are stated to be official witnesses, thus, the question of them being influenced by the petitioner does not arise. The petitioner is a lady, who has a 7 year old daughter to take care of. Perusal of the FIR would show that the recovery had been effected from the co-accused (husband of the petitioner) and not from the petitioner and they were stated to be walking and were not even in a vehicle. The question as to whether the petitioner, in such circumstances, could also be stated to be in conscious possession of the intoxicant tablets recovered, would be a matter of debate, which would be finally adjudicated during the course of trial. This Court is of the opinion that in the present case, there are arguable points which have been raised by the learned counsel for the petitioner and all the abovesaid 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.

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.

Pending miscellaneous application(s), if any, stand disposed of in view of the abovesaid order.

**July 08, 2022**  
naresh.k

**( VIKAS BAHL )**  
**JUDGE**

Whether reasoned/speaking?  
Whether reportable?

Yes/No  
Yes/No