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

CRM-M No. 35532 of 2022 (O&M)
Date of Decision: 07.12.2022

Rohtash

-Petitioner

Vs

State of Haryana

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Aditya Sanghi, Advocate,
for the petitioner.

Mr. Sumit Gupta, Addl. A.G., Haryana.

RAJ MOHAN SINGH, J. (ORAL)

CRM-45987-2022

For the reasons mentioned in the application, the same is allowed and the accompanying documents are taken on record, subject to all just exceptions.

Main case

Petitioner seeks grant of regular bail in his second attempt under Section 439 Cr.P.C. in case bearing FIR No.277 dated 05.08.2020 under Section 22 (c) of NDPS Act, registered at Police Station Dabwali Sadar, District Sirsa, Haryana.

Vide order dated 14.01.2021 passed in CRM-M No.35991 of 2020, the petitioner was granted interim bail in view

of law laid down in **Inderjeet Singh @ Laddi vs State of Punjab, 2014(3) RCR (Criminal) 953** till receipt of FSL report.

Thereafter, the petitioner was arrested in FIR No.336 dated 22.09.2021 under Sections 22-C/27A of NDPS Act, Police Station Sadar Dabwali and was granted default bail by the High Court in CRR No.933 of 2022 vide order dated 01.06.2022.

As per allegations, the petitioner was apprehended on the basis of suspicion when he was driving a motorcycle. 1100 strips each containing 10 tablets of Tramadol Hydrochloride bearing batch numbers were recovered from the petitioner.

Learned counsel for the petitioner submits that as of now, the petitioner has undergone 01 year and 07 months of actual custody after deducting the period spent by the petitioner in different cases.

Learned counsel further submits that in FIR No.278 dated 05.08.2020 under Section 22 of NDPS Act, the petitioner was implicated on the basis of disclosure statement of co-accused Shivraj @ Raju. Learned counsel submits that the plea as regards non-compliance of mandatory requirement of NDPS Act and material discrepancy in the prosecution case would be highlighted during course of investigation before the trial Court, however, considering the custody of the petitioner for the last 01

year and 07 months, the petitioner is entitled for grant of regular bail on the strength of **CRM-M No.24006 of 2022** titled '**Sukhwinder Singh vs State of Punjab**' decided on 19.09.2022 and **CRM-M No.9317 of 2022** titled '**Chunni Ram @ Sandeep vs State of Haryana**' decided on 22.11.2022, wherein period of custody was taken to be the ground for enlarging the accused on regular bail.

Learned counsel also relied upon orders of the Hon'ble Apex Court in **Special Leave to Appeal (Crl) No.4173 of 2022** titled '**Shariful Islam @ Sarif vs The State of West Bengal**' decided on 04.08.2022, **Special Leave to Appeal (Crl) No.5530 of 2022** titled '**Mohammad Salman Hanif Shaikh vs The State of Gujarat**' decided on 22.08.2022 and **Criminal Appeal No.245 of 2020** titled '**Chitta Biswas @ Subhas vs The State of West Bengal**' decided on 07.02.2020, wherein concession of regular bail was granted on the basis of custody of more than 01 year and 07 months approximately.

In **Sukhwinder Singh's case (supra)**, following observations were made by the Co-ordinate Bench while considering the regular bail of the accused:-

“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 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 vs. 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 vs. State of Punjab reported as 2018 (4) RCR (Criminal) 84**, had considered the provision of Section 37 of the Act of 1985 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 vs. 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 vs. 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 vs. 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 vs. State of Punjab and other connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the Act of 1985, 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; reported as (2021) 5 SCC 724** was also taken into account and the provisions of Section 37 of the Act of 1985 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.”

Learned State counsel on the basis of reply filed by way of affidavit of Kuldeep Beniwal, HPS, Deputy Superintendent of Police, Dabwali, District Sirsa, however opposed the bail on the ground of antecedent behaviour of the petitioner in terms of his involvement in number of cases. 03 prosecution witnesses out of 14 prosecution witnesses have been examined.

Learned counsel for the petitioner on the basis of **Criminal Appeal No.153 of 2020** titled '**Prabhakar Tewari vs State of UP and another**', decided on 24.01.2020 contends that involvement of the accused in other cases is no ground to dismiss the prayer of regular bail particularly when challan has already been submitted and the petitioner is in custody for the last more than 01 year and 07 months.

In view of above and without meaning anything on the merits of the case, the petition is allowed. The petitioner is directed to be released on regular bail, subject to his furnishing heavy bail bonds/surety bonds to the satisfaction of trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

07.12.2022
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No