

206

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

CRM-M No. 40304 of 2021
Date of Decision: 20.12.2022

Gurpreet Singh @ Gora

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vipul Jindal, Advocate,
for the petitioner.

Mr. Sanjeev Soni, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

Affidavit of Lakhbir Singh, PPS, Assistant Inspector General of Police, State Special Operation Cell, Fazilka filed along with copy of report of Director, DITAC cum State Cyber Crime Cell, Mohali is taken on record, subject to all just exceptions.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.1 dated 19.01.2020 under Sections 21, 61, 85 of NDPS Act, registered at Police Station State Special Operations Cell, Fazilka, District Intelligence Wing (CID).

As per prosecution case, a special naka was installed at Ferozepur-Fazilka road, T-point link road Mamdot for checking of vehicles. At about 9.45 PM, one Maruti car came from Mamdot side. On being signalled, the driver of the car tried to accelerate the vehicle, but the same was encircled with the help of police personnels. Two persons were sitting in the car. The driver of the car told his name as Gurpreet Singh @ Gora and the co-occupant of the car disclosed his name as Satnam Singh @ Satta. An offer was given to them as regards their search to be conducted before a Magistrate or Gazetted Officer. Both opted their search to be conducted by a Gazetted Officer and therefore, Sh. Jasbir Singh Pannu, PPS, Deputy Superintendent of Police, Counter Intelligence, Ferozepur was requested to reach at the spot. On search of the occupants of the car, 2 kg Heroin in two packets weighing 1 kg each was recovered from the petitioner. Similar recovery was effected from co-accused. Disclosure statement of co-accused was recorded on 21.01.2020. Satnam Singh @ Satta confessed about one Pakistani sim, one mobile phone mark SAMSUNG and Rs.1,75,000/- indian currency notes which he took for delivery of the packets of Heroin and the same were kept concealed in soil under electricity pole outside of cattle porch. The recovery was effected from the co-accused.

Learned counsel for the petitioner submits that no recovery has been effected from the petitioner, except the alleged contraband and the petitioner is not involved in any other case and has already undergone 02 years 11 months and 01 day of incarceration till date.

Learned counsel for the petitioner relies upon **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 even on commercial quantity.

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."*

Per contra, learned State counsel opposed the bail on the ground that the vehicle was registered in the name of the petitioner and the recovery effected from the petitioner is commercial quantity, however, learned State counsel admits that the petitioner is not involved in any other case as per the custody certificate. Out of total 13 prosecution witnesses, two prosecution witnesses have been completely examined and now 23.01.2023 is the date fixed for remaining evidence.

Taking into consideration all the attending facts and circumstances of the case, particularly in the light of period of 02 years, 11 months and 01 day already undergone by the petitioner, I deem it appropriate to enlarge the petitioner on regular bail.

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 adequate 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.

20.12.2022
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

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