

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-36088-2022

Date of decision : 14.11.2022

Gurbachan Singh @ Toti

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sandeep Kumar Passi, Advocate
for the petitioner.

Mr.Tarun Aggarwal, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.6 dated 11.01.2022 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Mamdot, District Ferozepur.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case inasmuch as the petitioner is a poor person as he worked as a tea vender, had given a complaint to the Director General of Police, Homeguard Department, Ferozepur on 04.05.2021 against Home Guard Buta Singh Police Station Mamdot alleging that said Buta Singh used to extract money from the petitioner and also used to drink tea from the stall of the petitioner for free and also used to threaten him. It is submitted that on the said complaint dated 04.05.2021, cognizance had been taken by the Punjab State Human

Rights Commission vide order dated 03.11.2021 (Annexure P-4) and the Punjab State Human Rights Commission had directed that the matter be placed before the Senior Superintendent of Police, Ferozepur to submit its report. It further submitted that after passing of the said order, the present petitioner has been falsely implicated in the present FIR. A joint reading of the FIR and the recovery memo (Annexure P-7) would show that as per the prosecution case, the petitioner was apprehended from the grain market whereas the petitioner has relied upon photographs (Annexure P-6) to show that the petitioner was picked up from his tea stall. It is stated that a further perusal of the said documents would show that there are several arguable points in favour of the petitioner including the question as to whether it could be said that the present petitioner was in conscious possession of the intoxicant tablets or not inasmuch as it is the case of the prosecution that on seeing the police party, he had thrown the polythene bag which contained intoxicant tablets on the ground. It is further stated that in the recovery memo, there is also a reference to the effect that the intoxicant tablets were in a transparent polythene bag. In support of his arguments, learned counsel for the petitioner has relied upon a 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 judgement in ***CRM-M-33733-2020 dated 15.03.2021*** titled as '***Manjit Singh Vs. State of Punjab*** alongwith connected matters', to contend that in such a situation, it is matter of debate as to whether the petitioner could be stated to be in conscious possession of the narcotic tablets in question or not. It is argued that the petitioner has been in custody since 11.01.2022 and the investigation is complete and the challan has already been presented and there are 9 witnesses, out of which,

none have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery has been effected from the conscious possession of the petitioner inasmuch as the police officials had seen the petitioner throw the polythene bag which contained the intoxicant tablets and thus, it could not be stated that the recovery is not from the conscious possession of the petitioner. It is further submitted that the recovery from the polythene bag is of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply.

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 'Niranjana 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 also, the recovery effected was of commercial quantity but, since the recovery of the polythene bag therein was 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 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.

With respect to Section 37 of the NDPS Act, it would be relevant to note the various cases wherein the Hon'ble Supreme Court and High Courts have granted bail / suspension of sentence in cases involving commercial quantity.

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 coordinate 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

“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

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***; reported as **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.

In the present case, the petitioner has been in custody since 11.01.2022 and the investigation is complete and the challan has already been presented and there are 9 witnesses, out of which, none have been examined and thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case. There are specific averments of false implication made in the present petition and it has been highlighted that prior to the registration of the FIR, a complaint dated 04.05.2021 was submitted by the petitioner against Buta Singh, Home Guard posted at Police Station Mamdot to the Director General of Police, Ferozepur and in the said complaint it was alleged that the said police official used to extract money and also used to drink tea for free at the tea stall of the present

petitioner. A perusal of Annexure P-4 dated 03.11.2021 would show that the Punjab State Human Rights Commission in pursuance of the complaint dated 04.05.2021 had directed the Senior Superintendent of Police to submit its report before the next date of hearing and it is subsequent to the same, that the present FIR has been registered at Police Station Mamdot. A perusal of the recovery memo would show that the petitioner has been apprehended from the grain market whereas it is the case of the petitioner that he had been picked up from his tea stall and reliance has been placed upon photographs (Annexure P-6) to substantiate the same. The question whether the petitioner has been falsely implicated or not, would be finally adjudicated during the course of trial. There are several arguable points in favour of the petitioner including the point as to whether the recovery in the present case could be stated to be from the conscious possession of the petitioner or not inasmuch as, as per the case of the prosecution, the polythene bag was thrown upon seeing the police party and thus, in view of the judgments cited by learned counsel for the petitioner, it would be a matter of debate as to whether the petitioner could be stated to have been in conscious possession of the alleged contraband or not and the same would be finally adjudicated during the course of the trial Court and the same raises a strong prima face argument in favour of the petitioner. Moreover, the petitioner is not involved in any other case and thus, keeping in view the law laid down in *Ankush Kumar @ Sonu's* case (supra), it could be reasonably said that the petitioner is not likely to commit any offence while he is on bail. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the Act of 1985.

Accordingly, the petition is allowed and the petitioner is

directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to him 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 of, or for commission of which they are 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.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

November 14, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No