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

CRM-M No. 39186 of 2022
Date of Decision: 21.12.2022

Bhola Singh

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Milkhail Kad, Advocate,
for the petitioner.

Mr. R.S. Pandher, Sr. D.A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner seeks grant of regular bail in his third attempt under Section 439 Cr.P.C. in case bearing FIR No.037 dated 06.02.2020 under Sections 20, 22, 29 and 31 of NDPS Act (Offence under Section 31 of NDPS Act added later on), registered at Police Station City Sunam, District Sangrur.

CRM-M No.36783 of 2020 was dismissed on 14.09.2021 and thereafter, CRM-M No.3237 of 2022 was got dismissed as withdrawn on 29.04.2022.

As per allegations in the FIR, 980 intoxicant tablets labelled as Clovidol-100 SR in 98 strips each containing 10 tablets with batch numbers and other particulars were recovered along with 02 kgs of *Ganja* on 06.02.2020. As per Chemical

Examiner's report, Tramadol Hydrochloride was detected and average weight of the tablet was found to be 399 mg. In this way, total weight of the psychotropic substance i.e. Tramadol was found to be 391.020 grams which is commercial quantity. The recovery of *Ganja* is alleged to be non-commercial in nature.

Learned counsel for the petitioner submits that the petitioner has undergone 02 years, 10 months and 17 days of incarceration as on 20.12.2022.

With reference to the period undergone by the petitioner, learned counsel for the petitioner submits that the petitioner is entitled for 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.

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 of recovery being commercial in nature and the antecedent behaviour of the petitioner in view of his involvement in number of cases.

Learned counsel for the petitioner submits that in FIR No.128 dated 23.07.2013 under Section 20 of NDPS Act, 2 kg *Ganja* was recovered and the petitioner was convicted and sentenced to undergo rigorous imprisonment for 10 years and the sentence of the petitioner has already been suspended in an appeal vide order dated 27.11.2019. In FIR No.112 dated

07.07.2013 under Section 61 of the Excise Act, Police Station City Sunam, the petitioner was released on personal bonds of Rs.20,000/- vide order dated 08.09.2016. In FIR No.153 dated 30.08.2009, 06 kgs of poppy husk was allegedly recovered and the petitioner was sentenced to undergo rigorous imprisonment for 02 months and to pay fine of Rs.3,000/- and sentence of the petitioner was suspended vide order dated 09.11.2009. In FIR No.445 dated 28.12.2005 under Section 15 of NDPS Act, Police Station Sunam, the petitioner was arrested with 20 kgs of poppy husk in which he has been acquitted vide judgment dated 09.11.2011.

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 the petitioner has already undergone 02 years, 10 months and 17 days of incarceration as of now.

Taking into consideration all the attending facts and circumstances of the case, particularly in the light of period of 02 years, 10 months and 17 days 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.

21.12.2022
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

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