

CRM-M-44486-2021,
CRM-M-41893-2021 and
CRM-M-37417-2021

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

1. CRM-M-44486-2021
Date of decision : 15.02.2022

Munish Kumar

...Petitioner

Versus

State of Punjab

...Respondent

2. CRM-M-41893-2021
Date of decision : 15.02.2022

Shiva Singh

...Petitioner

Versus

State of Punjab

...Respondent

3. CRM-M-37417-2021
Date of decision : 15.02.2022

Rajinder Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sant Pal Singh Sidhu, Advocate for the petitioner

(CRM-M-44486-2021)

Mr. Fatehjeet Singh, Advocate for the petitioner
(CRM-M-41893-2021)

Mr. Sandeep Kumar Passi, Advocate for the petitioner
(CRM-M-37417-2021)

Mr. Saurav Khurana, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

By this order, three petitions, bearing No.CRM-M-37417-2021, CRM-M-41893-2021 and CRM-M-44486-2021, filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner(s) therein in FIR No.147 dated 27.06.2021 registered under Sections 22(a) and 29 (added later on) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) at Police Station City Kotkapura, District Faridkot, Punjab, shall stand disposed of.

CRM-M-37417-2021 has been filed by Rajinder Kumar, CRM-M-41893-2021 has been filed by Shiva Singh and CRM-M-44486-2021 has been filed by Munish Kumar.

With the consent of learned counsel for the parties, the case of Munish Kumar (petitioner in CRM-M-44486-2021) has been taken as lead case.

Learned counsel for the petitioner(s) have submitted that in the present case, as per the FIR, it had been stated that Rajinder Kumar and Shiva Singh had been apprehended with an Aactiva bearing

Registration No.PB-79-2940 on the basis of suspicion and on the footrest of the said Aactiva, one transparent polythene carry bag was lying (*pardarshi momi lifafa*) from which, a total of 2600 intoxicant tablets with mark Lezidol-Plus Paracetamol & Tramadol Hydrochloride tablets were recovered.

Learned counsel(s) for Rajinder Kumar (petitioner in CRM-M-37417-2021) and Shiva Singh (petitioner in CRM-M-41893-2021) have stated that it has been repeatedly held by the Coordinate Benches of this Court that it is highly unlikely for a person who has to carry contraband, to carry the same in a transparent polythene bag (wrongly translated as transparent glaze carry bag in CRM-M-44486-2021 and correctly translated as transparent polythene in CRM-M-37417-2021) and on the basis of the said point alone, the Coordinate Benches of this Court have granted the concession of bail to the accused persons in such cases. Reference has been made to the various orders passed by the Coordinate Benches of this Court i.e. **order dated 02.08.2021 passed in CRM-M-4408-2021 titled Banti Kaur @ Bhanti Kaur Vs. State of Punjab, Binder Kaur @ Goga Vs. State of Punjab** reported as **2021(3) RCR (Criminal) 360, Jaskaran Singh @ Jassu Vs. State of Punjab**, reported as **2021(2) RCR (Criminal) 837, order dated 28.02.2020 passed in CRM-M-8026-2020 titled as Lakhwinder Singh @ Lakha Vs. State of Punjab.**

Learned counsel for the petitioner(s) have submitted that in the present case, there was no strict compliance of Section 50 of the Act of

1985 inasmuch as while giving the offer as is mandated under Section 50 of the Act of 1985, it has been stated that the accused had been given the option of getting his search done before the Magistrate or the Gazetted Officer of Punjab only. The said aspect is apparent from the FIR itself, which is at page 12 of the petition. It is further submitted that limiting the offer to getting searched before the Gazetted Officer of Punjab, is not in consonance with Section 50 of the Act of 1985.

Learned counsel(s) for the petitioner-Rajinder Kumar and Shiva Singh have submitted that the accused persons are in custody since 27.06.2021 and the challan has already been presented in the case and there are 30 witnesses, out of which, none have been examined as yet and thus, the conclusion of trial of the case is likely to take time, moreso, in view of the present COVID-19 pandemic. It is further submitted that the said persons are not involved in any other case.

Learned counsel for the petitioner-Munish Kumar has, in addition to the arguments raised by the counsel(s) for the petitioner-Rajinder Kumar and petitioner-Shiva Singh, further submitted that there is no recovery effected from the petitioner-Munish Kumar and the petitioner-Munish Kumar is not even named in the FIR. It is argued that he has been implicated solely on the basis of disclosure statement of Rajinder Kumar. He has relied upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1**, an order passed by Coordinate Bench of this Court dated

17.06.2020 in CRM-M-12051-2020 titled “*Mewa Singh Vs. State of Punjab*”, and an order of another Coordinate Bench dated 16.07.2021 passed in CRM-M-12997-2020 titled as “*Daljit Singh Vs. State of Haryana*” to contend that in such like cases, if a person has only been proceeded against on the basis of disclosure statement of co-accused and no recovery has been effected from the petitioner, then he should be granted the benefit of bail and that the said disclosure statement made before the police would be an inadmissible in evidence. He has further submitted that in the present case, in fact, the petitioner was picked up from his house on 27.06.2021 at about 07.10 pm by the officials of CIA Staff, Faridkot, who were in civil dress, from Jatinder Chowk, Mohalla Tailian Wala, Faridkot, and was taken in a white car of the police officials and was, thereafter, forcibly implicated in the present case by showing his arrest on 29.06.2021. Reference has been made to the order dated 23.07.2021 (Annexure P-2), which is at page 15 of the paper book, in which the said pleas had been raised while arguing the application for preserving the camera recordings regarding the entry point i.e. front gate of CIA Staff Faridkot, facing Bus stand. The Additional Sessions Judge, Faridkot, vide order dated 23.07.2021 had recorded the statement of SI Surinder Singh to the effect that the said footage has been preserved and had accordingly, disposed of the said application. Learned counsel for the petitioner has submitted that same would help the petitioner in establishing that the case of the prosecution is false and the said Munish Kumar has

been falsely implicated. Learned counsel for the petitioner-Munish Kumar has further submitted that the petitioner is not involved in any other case.

Notice of motion.

On advance notice, Mr. Saurav Khurana, DAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the abovestated three petitions for grant of regular bail to the petitioner(s) and has submitted, on instructions from ASI Chamkaur Singh, that the recovery has been effected from Rajinder Kumar and Shiva Singh and thus, their bail deserves to be rejected on the said ground alone. Even with respect to Munish Kumar, it has been stated that said Munish Kumar had further given a confessional statement to the effect that one Gundeep Singh was the one who had supplied the said medicines to him and Munish Kumar had further sold them to co-accused Rajinder Kumar and Shiva Singh. It is submitted that although, there is no recovery from Munish Kumar, but there are whatsapp chats between Munish Kumar and Rajinder Kumar.

Learned counsel for the petitioner-Munish Kumar, in rebuttal to the said argument, has submitted that as per the challan, there are no such whatsapp chats and the said Gundeep has been found to be innocent by the police.

This Court has heard the learned counsel for the parties and has perused the paper book.

A perusal of the FIR would show that the alleged recovery was effected from one transparent polythene carry bag (*pardarshi momi lifafa*) (wrongly translated as transparent glaze carry bag in CRM-M-44486-2021 and correctly translated as transparent polythene in CRM-M-37417-2021) which was lying on the footrest of the said Aactiva, which was being driven by the petitioner-Rajinder Kumar and Shiva Singh was the pillion rider of the same. The Coordinate Bench of this Court in **Banti Kaur @ Bhanti Kaur's case** (Supra) has held as under:-

- “1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against her vide FIR No.191, dated 8.10.2020, Police Station Cantt Bathinda, District Bathinda, under Section 22 of NDPS Act, wherein it is alleged that the petitioner was caught red-handed while carrying a transparent plastic polythene bag which was found to contain 1000 tablets of ‘Clovidol’.*
- 2. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the instant case and that she has an unblemished record and is not involved in any other case and it is highly unlikely that any person who is carrying contraband would carry the same in a transparent bag so as to invite attention, including that the police.*
- 3. Opposing the petition, learned State counsel has not disputed the fact that the contraband is alleged to have been carried in a transparent plastic polythene bag. He has however, submitted that the weight of the total recovered contraband works out to 410 grams of ‘Tramadol’ which would fall within the category of*

‘commercial quantity’. Learned State counsel has however, informed that the petitioner is not involved in any other case and has presently been behind bars since the last about 9 months and 17 days.

4. I have considered rival submissions addressed before this Court.

5. It is not disputed that the contraband was alleged to have been carried by the petitioner in a transparent polythene bag. It is certainly highly unlikely that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. Carrying contraband in a transparent polythene bag making it clearly visible to others would surely invite attention of everybody who passes by. In these circumstances the case of the prosecution is rather rendered suspect particularly in view of the fact that the petitioner is not even stated to be a previous convict and is a lady who has been behind bars since the last about 9 months. In view of the aforesaid discussion particularly the fact that the petitioner is a lady and is not even a previous convict, the petition is accepted and the petitioner is ordered to be released on bail subject to her furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

2.8.2021

Sd/- (GURVINDER SINGH GILL)

JUDGE”

A perusal of the said judgment would show that although, in the said case, recovery was of commercial quantity but it was found that since recovery was effected from a transparent polythene bag, the same made the case of the prosecution doubtful and it was observed therein that

as it was highly unlikely that a person who is committing an offence with respect to the contraband, would carry the contraband in a transparent polythene bag.

The Coordinate Bench in **Jaskaran Singh @ Jassu's case** (Supra), after considering the several judgments on the same issue, had also granted the concession of regular bail to the petitioner in that case. Relevant portion of the judgment is reproduced as under:-

“xxx xxx

2. Relies upon the decision of this Court in Lakhwinder Singh alias Lakha vs. State of Punjab (CRM-M No.8026 of 2020) and of Co-ordinate Benches in Binder Kaur alias Goga vs. State of Punjab (CRM-M No.4584 of 2020) and Mandir Singh vs. State of Punjab (CRM-M No.8035 of 2019) to contend that a person engaged in the trade of contraband would never be expected to carry the same in any transparent bag which would be visible to the naked eyes.

3. Per contra, the bail application is opposed on behalf of the State by contending that the recovery of commercial quantity of contraband was made from the car of the petitioner himself.

4. Be that as it may, without prejudice to the merits of the submission raised on behalf of the petitioner, but considering that he is admittedly not involved in any other case under the NDPS Act, and also considering that he has remained in detention well above 05 months since 14.12.2019, at this stage, the petitioner may be released on regular bail to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned subject to imposition of appropriate

terms and conditions.

Xxx xxx”

The Coordinate Bench of this Court in **Binder Kaur @ Goga's case** (Supra), had held as under:-

“xxx xxx

2. Learned counsel for the petitioner has vehemently argued that in the present case the petitioner has been falsely implicated. He has further stated that the petitioner is a young lady of 38 years of age, having a family and has good antecedents. He has further stated that there is no past history of the petitioner and she is not involved in any other case till date. He has further contends that even as per the allegations contained in the FIR, the petitioner was carrying 1000 tablets containing Tramadol Hydrochloride salt in her hand, which was in a transparent polythene bag. Learned counsel states that the story put forward by the police is ex facie concocted because in case any person wishes to do the trading or to carry the contraband then it would never be put in a transparent bag. He has further pointed out that in the FIR it has been repeatedly recorded that bag was transparent in nature. He has further submitted that the petitioner is in custody since 08.11.2019.

xxx xxx

4. Learned State counsel has filed the custody certificate of the petitioner by way of affidavit of Rajdeep Singh Brar, Deputy Superintendent, Central Prison, Faridkot. Same is taken on record. As per the custody certificate the petitioner is in custody for a period of 02 months and 27 days and there is no other case against her. He further submits that after completion of investigation

and presentation of challan, the charges have also been framed by the trial Court.

Xxx xxx

6. At the time of deciding bail application there are various relevant factors, which can be taken into consideration. Prima facie probability of influencing witnesses is one of the element factor and also as to whether the petitioner is particularly involved in any other case is also a relevant factor. It is also relevant in any case for deciding the bail application as to what is the stage of the case. In the present case the investigation is already over and the petitioner is in custody for about three months and this Court while deciding the bail application would not go into the merits of the case. Nothing is apparent to show that petitioner may influence the witnesses. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court.

Xxx xxx”

A perusal of the above judgment would show that in fact, bail was granted on the said point in a case where the accused was in custody only for a period of three months. Similarly, in **Lakhwinder Singh @ Lakha's case** (Supra), the Coordinate Bench of this Court had held as under:-

“xxx xxx

2. Ld. Counsel for the Petitioner relies on a decision of a Co-ordinate Bench of this Court in 'CRM-M No.4584 of

2020 - Binder Kaur alias Goga vs. State of Punjab', to contend that it is unbelievable that a person engaged in the business of Drug Smuggling, will carry the contraband in a transparent Bag. The applicant, in the aforesaid case, in the given circumstances, considering that she was not involved in any other case under the NDPS Act and challan against her had already been submitted, was therefore released on bail by the Bench after she had remained in detention for 02 months and 27 days.

3. The detention undergone by the present Petitioner is much more being 08 months, and he is also not stated to be involved in any other case under the NDPS Act.

4. Challan against the Petitioner has already been submitted and the trial is still pending.

5. As such, considering the long detention already undergone by the present Petitioner and without commenting on other merits of the case, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court concerned.

6. Disposed off.”

Apart from the above points raised in the case of Munish Kumar, there are some additional arguments raised to the effect that neither any recovery was made from the said Munish Kumar, nor he was named in the FIR and he has been implicated solely on the basis of disclosure statement of co-accused Rajinder Kumar.

A Coordinate Bench of this Court in **Mewa Singh's** case (Supra) has passed the following order:-

“1. The petitioner has approached this Court seeking

grant of anticipatory bail in a case registered against him vide FIR No.133 dated 24.11.2019 under Section 21 NDPS Act Police Station Lohian, District Jalandhar.

2. *Reply way of affidavit of Mr. Piara Singh, PPS, Deputy Superintendent of Police, Sub-Division Shahkot, District Jalandhar (Rural) on behalf of the respondent-State has been filed, which is taken on record.*

3. *The allegations in nut-shell are that Bachittar Singh was found in possession of 1.7 Kgs. 'Heroin'. During the course of interrogation, he made a disclosure statement nominating the petitioner as an accused wherein he stated that the contraband in question had been supplied by the petitioner.*

4. *Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and was never arrested at the spot and that the alleged disclosure statement is not worth credence.*

5. *Opposing the petition, learned State counsel has submitted that keeping in view the antecedents of the petitioner his complicity is clearly evident inasmuch as he stands involved in three other cases i.e. FIR No.43 dated 2.4.2016 under Sections 15, 21, 22 NDPS Act, Police Station Sultanpur Lodhi; FIR No.5 dated 5.1.2020 under Sections 307, 186, 332, 353, 224, 225, 427, 148, 149 IPC, Police Station Sultanpur Lodhi & FIR No.193 dated 193 dated 22.11.2019 under Sections 15, 21, 25, 29 NDPS Act, Police Station Kartarpur.*

6. *I have considered rival submissions addressed before this Court.*

7. *It is not disputed that the petitioner was never apprehended at the spot and that the only evidence against*

him is in the shape of disclosure statement, the admissibility and veracity of which would be tested during the course of trial. As regards the other three cases which are stated to be pending against the petitioner, the learned counsel for the petitioner has submitted that even in the said cases he has been falsely implicated and was never arrested at the spot and has been granted anticipatory bail in all three cases.

8. *Having regard to the facts and circumstances of the case and that it is a case where the petitioner has been nominated solely on the basis of disclosure statement, the petition is accepted and it is ordered that the petitioner in the event of his arrest shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.*

9. *It is however clarified that in case the petitioner does not join investigation, it shall be open to the investigating agency/prosecution to move for cancellation of his bail.”*

Another Coordinate Bench of this Court in ***Daljit Singh's*** case (Supra) has passed the following order:-

“Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.188 dated 08.04.2020 registered under Sections 15, 18, 27A, 29 of NDPS Act, under Sections 140, 188, 216, 419, 420, 467, 468, 471, 474 IPC and under Section 6 of Official Secret Act at Police Station Pehowa, District Kurukshetra.

Petitioner has been implicated on the basis of disclosure statement of co-accused from whom 248 kgs of poppy husk, 1 Kg 500 grams of opium and 199 Kgs khas khas were recovered.

FIR was registered on the basis of secret information, but still name of petitioner did not figure in the ruqa of the police.

Notice of motion was issued on 27.05.2020 alongwith interim directions in favour of the petitioner to join the investigation.

Order dated 27.05.2020 is reproduced here as under:-

“On account of outbreak of covid-19 the instant matter is being taken up through video conferencing.

Instant petition has been filed under Section 438 Cr.PC for grant of anticipatory bail to the petitioner in FIR No.188 dated 8.4.2020 for the offences under Section 15,18,27-A,29 of NDPS Act, 1985 at Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner has inter alia contended that the petitioner is innocent and has been falsely implicated in the case only on the basis of disclosure statement of co-accused from whom recovery of 248 kgs of poppy husk, 1 kg 500 grams of opium and 199 kgs.of khas khas was recovered. It has been further contended that the factum of his false implication is further fortified from the fact that the recovery of the aforementioned

narcotic contraband was effected on the basis of secret information and his name did not figure either in the ruka sent by the police nor in the FIR in question coupled with the fact that nothing was recovered from him. He is not even involved in any other case of similar nature.

Notice of motion for 10.7.2020.

On the asking of the Court, Mr. Saurabh Mohunta, DAG., Haryana accepts notice.

Meanwhile, petitioner is directed to join the investigation and appear before the investigating agency/Investigating Officer. On his appearance, he shall be released on interim bail to the satisfaction of arresting/investigating officer. The petitioner shall, join the investigation as and when call for and shall abide by the conditions specified under Section 438(2) Cr.P.C.

27.05.2020 (MANJARI NEHRU KAUL)
archana JUDGE

Thereafter, the case was adjourned for filing detailed reply on behalf of the State.

The stands of the State is that the petitioner was escorting the canter in which the contraband was present and he was assigned the duty of giving signal in case of presence of police on the way.

Learned State counsel relies upon call details, tower location of the petitioner and the co-accused and also relies upon bank statement showing deposit of amount in the account of co-accused. The material on which the

learned State counsel relies upon is dependent upon the evidence to be led in that context at the relevant stage.

Petitioner has joined the investigation, but learned State counsel seeks custody of the petitioner on the aforesaid premise.

*Having heard learned counsel for the parties, I find that the petitioner having involved on the basis of disclosure statement of co-accused namely Balbir and Rajinder is hit by the ratio of **Tofan Singh vs State of Tamil Nadu, Criminal Appeal No.152 of 2013** wherein it has been observed that the officers who are invested with powers under Section 53 of NDPS Act are the police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made before the police officer would be hit by Section 25 of the Evidence Act. Statement under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act.*

In view of aforesaid position, it would be just and appropriate to confirm order dated 27.05.2020, without meaning anything on the merits of the case.

Ordered accordingly.

However, the petitioner shall keep on joining the investigation as and when required to do so by the Investigating Officer and shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petition stands disposed of.”

Reference has also been made to the order dated 23.07.2021

(Annexure P-2) passed by the Additional Sessions Judge, Faridkot which

is at page 15 of the paper book in order to show that even at that stage, it

was the argument of the petitioner-Munish Kumar that in fact, he was picked up on 27.06.2021 at about 07:10 pm and has been falsely implicated in the case by showing his arrest to be on 29.06.2021. The said arguments were raised in the application filed for preserving the camera recordings pertaining to the front gate of CIA Staff, Faridkot from the relevant dates and in response to that, SI Surinder Singh had suffered statement that the said footage had been preserved and accordingly, the said application was disposed of.

All the abovesaid facts noticed would show that there are arguable points in favour of the petitioner(s). The petitioner-Rajinder Kumar and petitioner-Shiva Singh are in custody since 27.06.2021 and the petitioner-Munish Kumar even as per the prosecution case, is in custody since 29.06.2021 and the challan in the present case has already been filed and there are 30 witnesses, out of which, none have been examined as yet and thus, the conclusion of the trial of the case is likely to take time moreso, in view of the present COVID-19 pandemic. The petitioner(s) are also stated to be not involved in any other case.

With respect to the bar under Section 37 of the Act of 1985, it would be relevant to refer to various judgments passed by the Hon'ble Supreme Court as well as by this High Court. 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 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 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 10343-2021 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 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; (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. It is apparent that to meet the requirement of Section 37 of the Act of 1985, 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.

Keeping in view the facts and circumstances of the case, this Court feels that in the present case, there are several arguable points involved, which would be determined during trial, including the point of false implication, and thus, the petitioner(s) are entitled to grant of regular bail. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the Act of 1985.

Accordingly, all the three present petitions are allowed and the petitioner(s) are directed to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to them not being required in any other case. The petitioner(s) shall also abide by the following conditions:-

1. The petitioner(s) will not tamper with the evidence during the trial.
2. The petitioner(s) will not pressurize/intimidate the prosecution witness(s).

3. The petitioner(s) will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner(s) shall not commit an offence similar to the offence of which they are accused, or for commission of which they are suspected.
5. The petitioner(s) 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/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

However, it is made clear that in case, any act is done by the petitioner(s) to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner(s).

Nothing stated above shall be construed as an 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 application.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

15.02.2022

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**