

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(206)

CRM-M-41405-2020 (O&M)
Date of decision: - 02.09.2022

Mohit Gupta

....Petitioner

Versus

Union of India through Narcotics Control Bureau, Chandigarh

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sant Pal Singh Sidhu, Advocate
and Mr. Sarbuland Mann, Advocate
for the petitioner.

Ms. Puneeta Sethi, Senior Panel Counsel,
for the respondent-NCB.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing Crime No.33/12.06.2020 under Sections 8, 21, 22, 29 and 60 of the Narcotic Drugs & Psychotropic Substances Act, 1985, registered at Police Station Narcotic Control Bureau, Chandigarh.

2. This judgment has been divided into the following segments: -

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3. The brief facts of the case of the prosecution are that one Paramjit Kaur, who is stated to be the proprietor of Brioshine Pharma, had booked two consignments. The first consignment was booked on 10.06.2020 and the second consignment was booked on 12.06.2020. The Narcotics Bureau, Headquarters, Chandigarh received secret information with respect to the said two consignments and after receiving the said information, they reached the Regional Office of DTDC Courier Agency at Panchkula on 12.06.2020 and thereafter, called Paramjit Kaur and after that, the said Paramjit Kaur confirmed that she had booked the parcels herself and upon opening one of the parcels at Panchkula, it was found that the same contained 20,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR), which were recovered from the said parcel and thereafter, the said Paramjit Kaur was arrested. The said Paramjit Kaur in her disclosure statement stated that the other consignment had been sent by her to Bhavnish Kumar (/Bhavneesh Dutta), son of Prem Kumar Dutta, at Ferozepur and accordingly, on 12.06.2020 itself, the Narcotics Bureau, Amritsar went to the DTDC Office at Court Road, Ferozepur and after the said Bhavnish Kumar received the parcel, the officials of the Narcotics Bureau, Amritsar arrested the said Bhavnish

Kumar and recovered 37,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR). It is further the case of the prosecution that Paramjit Kaur had made her disclosure statement on 12.06.2020, in which she has implicated one Rakesh Kumar Singla to be the person, who had sent both consignments to her for its onward dispatch to Bhavnish Kumar. The said Paramjit Kaur had not named the present petitioner in her disclosure statement. On the basis of the said disclosure statement, Rakesh Kumar Singla was arrested on 14.06.2020 and whatsapp messages exchanged between the said Rakesh Kumar Singla and Parmajit Kaur were retrieved and there was a message showing of transfer of an amount by Rakesh Kumar Singla into the account of Harjinder Singh, who was the husband of Paramjit Kaur. The said Rakesh Kumar Singla has been granted regular bail by a Co-ordinate Bench of this Court, vide order dated 14.01.2021 passed in CRM-M-23220-2020. The co-accused Bhavnish Kumar had suffered a disclosure statement implicating the present petitioner in the crime and thereafter, the Petitioner was arrested on 02.08.2020. The petitioner had then applied for regular bail, which was rejected by the learned Additional Sessions Judge, Panchkula, vide order dated 24.11.2020.

4. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 02.08.2020 (2 years and 1 month) and there are as many as 22 prosecution witnesses, out of whom, only one has been examined and thus, the trial is likely to take time. It is also submitted that the petitioner is not involved in any other case.

Learned counsel for the petitioner has submitted that the petitioner deserves the concession of regular bail on two counts, each of which considered independently, would entitle the petitioner to grant of the concession of regular bail. The first count being the length of the custody undergone by the petitioner, in addition to the fact that the trial has not made any progress and that the petitioner has clean antecedents. The second being the merits of the case, including the fact that co-accused of the petitioner, Rakesh Kumar Singla has been granted regular bail by a Coordinate bench of this court vide order dated 14.01.2021 and the case of the petitioner is on a higher footing than that of the said co-accused.

5. With respect to first argument pertaining to the period of custody, learned counsel for the petitioner has relied upon an order dated 12.01.2022 passed by the Division Bench of this Court in ***CRM-3773-2019 in CRA-D-198-DB-2017*** titled as “**Bhupender Singh Vs. Narcotic Control Bureau**, order dated 22.08.2022 passed by the Hon'ble Supreme Court in ***Special Leave to Appeal (Crl.) No.5530-2022*** titled as “**Mohammad Salman Hanif Shaikh Vs. The State of Gujarat**, order dated 07.02.2020 passed by the Hon'ble Supreme Court in ***Criminal Appeal No.245/2020*** titled as “**Chitta Biswas Alias Subhas Vs. The State of West Bengal**”, order dated 05.08.2022 passed by the Hon'ble Supreme Court in ***Criminal Appeal No.1169 of 2022*** titled as “**Gopal Krishna Patra @ Gopalrusma Vs. Union of India**”, order dated 01.08.2022 passed by the Hon'ble Supreme Court in ***Special Leave to Appeal (Crl.) No.5769/2022*** titled as “**Nitish**

Adhikary @ Bapan Vs. The State of West Bengal". It is submitted that on the said count alone, the petitioner deserves the concession of regular bail.

6. On merits, learned counsel for the petitioner has submitted that in the present case, no recovery has been effected from the present petitioner and even as per the case of the prosecution, it was co-accused Rakesh Kumar Singla who was the person who had dispatched two parcels of contraband to Paramjit Kaur and the said Paramjit Kaur had further dispatched one of the parcels to Bhavnish Kumar and it is the said Paramjit Kaur and Bhavnish Kumar who have been arrested along with one parcel each of the contraband. It is further submitted that co-accused Rakesh Kumar Singla, who as per the case of the prosecution, is the person who had dispatched the parcels of the contraband and was thus, the supplier, has already been granted the concession of regular bail by a Co-ordinate Bench of this Court passed in CRM-M-23220-2020, decided on 14.01.2021.

7. Learned counsel for the petitioner has further submitted that in the present case, even as per the case of the prosecution, it is co-accused Rakesh Kumar Singla who had supplied the two consignments to Paramjit Kaur and there is no link evidence to connect the petitioner with the said two persons. It is further submitted that there are no phone calls exchanged between the present petitioner and Paramjit Kaur or with Rakesh Kumar Singla and it is submitted that in case the petitioner was a part of the whole drug supply chain, then, there would have been calls exchanged between present

petitioner and Paramjit Kaur or with Rakesh Kumar Singla. It is further submitted that there is no allegation, much less proof, of any monetary transactions carried out between the Petitioner and the said co-accused and nothing to show that either Paramjit Kaur or Rakesh Kumar Singla or even Bhavnish Kumar had transferred any amount into the account of the present petitioner. It is stated that Paramjit Kaur in her disclosure statement had stated that the consignments were intended to be further dispatched to Bhavnish Kumar and had nowhere stated that it was to be supplied to the present petitioner and in case, the consignment was to be received by either Bhavnish Kumar or the present petitioner, or by both, then Paramjit Kaur would have also mentioned the name of the present petitioner in her disclosure statement. It is further stated that there is no tangible material to connect the petitioner with the alleged offence and the petitioner has been falsely implicated on the basis of the disclosure statement of co-accused Bhavnish Kumar, although no recovery has been effected from the petitioner even subsequent to the said disclosure statement and the arrest of the petitioner. Learned counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court in "**Tofan Singh vs. State of Tamil Nadu**" reported as **2021(4) SCC 1** and judgment passed in **CRM-M-12051-2020**, by a Co-ordinate Bench of this Court dated 17.06.2020 titled as "**Mewa Singh Vs. State of Punjab**" and the judgment passed in **CRM-M-12997-2020** titled as "**Daljit Singh Vs. State of Haryana**", to contend that a disclosure statement suffered by the accused is inadmissible in evidence. It is argued that the

petitioner's firm is enlisted in the list of Government contractors as Class-4 contractor and is supplying material to Civil, Railways, BSF and deals with stationary, sports items, firefighting equipment, computer parts, building material etc., and has been working since 2016 and has also been submitting ITR's with the department.

8. Learned counsel appearing for the respondent-NCB has opposed the present petition for regular bail and has submitted that in the consignment, which was dispatched by Paramjit Kaur to be received at Ferozepur, it was specifically mentioned in the receiver details that the same was to be delivered to the firm Balaji Traders and the names of both, Bhavnish Kumar as well as the present petitioner had been mentioned on the same. It is submitted that even the phone number of the present petitioner had been mentioned on the said parcel. It is argued that the petitioner had exchanged several phone calls with co-accused Bhavnish and has referred to the smart report with respect to the same, as per which, between 01.01.2020 and 12.06.2020, there was as many as 729 calls exchanged between Bhavnish and present petitioner. It is further argued that as per the case of the prosecution, it is the present petitioner who had gone along with Bhavnish to receive the consignment which was sent by Paramjit Kaur to Ferozepur and the present petitioner remained seated in the car, whereas Bhavnish had gone inside to receive the parcel and was arrested at the spot and the present petitioner managed to escape from there in the car. Learned counsel for the respondent-NCB has relied upon the judgment of Hon'ble Supreme Court in case titled as

“Narcotics Control Bureau Vs. Mohit Aggarwal”, passed in ***Criminal Appeal Nos.1001-1002 of 2022 (arising out of petitions for Special Leave to Appeal (Criminal) No.6128-29 of 2021)***, decided on 19.07.2022, to contend that the petitioner does not deserve the concession of regular bail. It is submitted that the contraband recovered in the present case is of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply. It is further argued that the regular bail application of co-accused, namely, Paramjit Kaur has been dismissed by a Co-ordinate Bench of this Court, vide order dated 14.01.2021 passed in CRM-M-28201-2020.

9. Learned counsel for the petitioner, in rebuttal to the arguments raised by learned counsel for the respondent-NCB, has submitted that on the parcel, which was dispatched by Paramjit Kaur, the name of Bhavnish Kumar, who actually received the parcel had been mentioned and although, the name of the present petitioner had also been mentioned on the same but even as per the case of the prosecution, the said parcel had not been received by the present petitioner or at the premises of the present petitioner. It is submitted that the petitioner cannot be implicated merely on account of the fact that a person chose to mention his name on the parcel, which further had not been recovered by the present petitioner but by another person, more so, when the same had not even been received at any premises owned by the present petitioner. It is further submitted that any person can cleverly mention the name of another person on a parcel, even when the other person is not at the receiving end of the

same and thus, the said mentioning of the petitioner's name in the present case cannot be considered to be a tangible evidence against the present petitioner. It is also submitted that in case the said parcel was meant to be received by the present petitioner also, in addition to Bhavnish, then Paramjit Kaur, who had dispatched the parcel, would have mentioned the name of the petitioner in her disclosure statement, more so, when she had already named Bhavnish Kumar as the person to whom she had dispatched the parcel to. It is stated that there is no material to show that the petitioner was sitting in the car at the time when the said Bhavnish had gone inside to receive the parcel from the office of DTDC, Ferozepur. It is further submitted that it is highly improbable that even in case, the petitioner was present in the car that he would have managed to escape, considering the fact that the team of the Narcotics Control Bureau, Amritsar had prior information with respect to the persons coming to receive the said consignment. It is also submitted that the said Bhavnish was earlier residing near the residential house of the petitioner and was on visiting terms and even used to come to meet the petitioner and is now the resident of the same village Satyewala as that of the present petitioner and thus, merely because there were phone calls exchanged between the two, the same cannot be made a ground to implicate the present petitioner, as admittedly, there is no proof of phone calls exchanged between the present petitioner and co-accused, namely, Paramjit Kaur and Rakesh Kumar Singla, who were the persons who had supplied the consignment. It is submitted that there is neither

any transcript, nor any recording of conversations pertaining to the said calls exchanged between Bhavnish Kumar and the present petitioner and has relied upon the judgment of the Division Bench of this Court in *CRMA-1065-MA-2016* titled as “*Narcotics Control Bureau v. Sandeep*” decided on 01.08.2018 as well as the judgment of the Gujarat High Court in “*Yash Jayeshbhai Champakal Shah V. State of Gujarat*, reported as 2022 SCC Online Guj 271, to contend that where there are no recordings of conversations exchanged between the accused, then the same cannot be treated as corroborative material in absence of substantive material found against the accused. Moreover, there is nothing to show that there were any money transactions carried out between any of the said co-accused and the present petitioner. It is argued that apparently Bhavnish, who was known to the present petitioner, had misused the name of the present petitioner and for the same, the petitioner cannot be implicated, more so, when there is no other legally admissible evidence against the present petitioner and the petitioner has completely clean antecedents. Learned counsel for the petitioner has further submitted that the dismissal of the bail application in the case of Paramjit Kaur would not, in any way, call for dismissal of the present application for grant of bail to the petitioner, inasmuch as, it has been specifically recorded by the Co-ordinate Bench of this Court in the said order of dismissal that it was the said Paramjit Kaur, who had booked the two consignments of contraband and the first consignment of 20,000 tablets of Tramadol Hydrochloride 100 mg

(Trade Name Clovidol-100 SR) was recovered from her and the second consignment of 37,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR) was recovered from Bhavnish, to whom the said Paramjit Kaur had dispatched the consignment. It is submitted that no recovery has been effected from the present petitioner. It is further submitted that even the judgment of the Hon'ble Supreme Court in **Mohit Aggarwal's case (supra)** would not apply in the case of the present petitioner, inasmuch as, in the said case, accused Mohit Aggarwal was the person who had purchased the contraband and had further supplied the same to the person from whom the same was ultimately recovered and more importantly, it was on the basis of the information given in the disclosure statement suffered by the said Mohit Aggarwal, that the NCB team had raided the godown of the co-accused Promod Jaipuria in the said case, which had resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups, whereas, the same is not the scenario in the present case as no recovery has been effected from the present petitioner, even after his arrest. It is also highlighted that in the said case, the custody undergone by the said Mohit Aggarwal was of 1 year and 3 months, whereas, the present petitioner has been in custody for the last 2 years and 1 month and the trial has not made any progress.

10. This Court has heard learned counsel for the parties and has gone through the paper-book.

11. The Hon'ble Supreme Court in ***Mohammad Salman Hanif Shaikh's*** case (Supra), had held as under:-

"We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.

Consequently, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this special leave petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing the bail bonds to the satisfaction of the Special Judge/concerned Trial Court.

The special leave petition is, accordingly, disposed of in the above terms.

Pending application(s), if any, shall also stand disposed of."

The above-said case was also a case under the NDPS Act, 1985 and the FIR had been registered under Sections 8(c), 21(c) and 29 of the said Act. The case of the prosecution therein was that the recovery from the said petitioner (therein) was of commercial quantity. The Hon'ble Supreme Court had observed that the concession of bail was granted to the petitioner (therein) only on the ground that he had spent about two years in custody and the conclusion of trial will take some time.

12. Hon'ble Supreme Court in ***Chitta Biswas Alias Subhas's*** case (Supra) was pleased to grant concession of bail to the petitioner (therein) in a case where the custody was of 1 year and 7 months approximately. The relevant portion of the said order dated 07.02.2020 is as under: -

"Leave granted.

This appeal arises out of the final Order dated 30.7.2010 passed by the High Court of Calcutta in CRM No.6787 of 2019. The instant matter arises out of application preferred by the appellant under Section 439 Cr.P.C. seeking bail in connection with Criminal Case No.146 of 2018 registered with Taherpur Police Station for offence punishable under Section 21-C of the Narcotic Drugs and Psychotropic Substances Act, 1985.

According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.

The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial. With the aforesaid directions, the appeal stands allowed."

13. In **Gopal Krishna Patra @ Gopalrusma's** case (Supra), the Hon'ble Supreme Court was pleased to observe as under:-

"Leave granted.

This appeal challenges the judgment and order dated 25.01.2022 passed by the High Court Of Madhya Pradesh, Principal Seat at Jabalpur, in MCRC No.117/2022. The appellant is in custody since 18.06.2020 in connection with crime registered as N.C.B. Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with

29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the facts and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out. We therefore, direct that:

(a) The appellant shall be produced before the Trial Court within five days from today.

(b) The Trial Court shall release the appellant on bail subject to such conditions as the Trial Court may deem appropriate to impose.

(c) The appellant shall not in any manner misuse his liberty.

(d) Any infraction shall entail in withdrawal of the benefit granted by this Order.

The appeal is allowed in aforesaid terms."

A perusal of the above-said order would show that in the said case also the custody was of approximately 2 years, 1 month and 17 days and the case was under the NDPS Act, 1985 and primarily, considering the length of the custody period, concession of bail was granted to the petitioner (therein).

14. The Hon'ble Supreme Court of India in **Nitish Adhikary @ Bapan's** case (Supra) has observed as under: -

"As per the office report dated 29.07.2022, copy of the show cause notice along with Special Leave Petition was supplied to the Standing Counsel for the State of West Bengal and separate notice has been served on the State also. However, no one has entered appearance on their behalf.

The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37

of the NDPS Act, registered at Police Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.

The petitioner is accordingly, directed to be released on bail subject to him furnishing bail bonds to the satisfaction of the Trial Court.

The Special Leave Petition is disposed of on the aforestated terms.

Pending application(s), if any, shall stand disposed of."

A perusal of the said order would also show that the said case was under the NDPS Act, 1985 and the provision of Section 37 of the NDPS Act, 1985 were also mentioned in the same and the bail was granted primarily by considering the petitioner (therein) had undergone custody for a period of 01 year and 07 months and only one witness had been examined and that the petitioner (therein) did not have any criminal antecedents.

15. The Division Bench of this Court in ***Bhupender Singh's*** case (Supra), had also held that in case, the accused person is able to make out a case within the parameters of Article 21 of the Constitution of India in view of the custody period, then he deserves the concession of regular bail, even in the face of rigors of Section 37 of the NDPS Act, 1985.

16. In the present case, the petitioner has been in custody since 02.08.2020 (2 years and 1 month) and there are as many as 22 prosecution witnesses, out of which, only one witness has been examined and thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. The above-said judgments of the Hon'ble Supreme Court thus apply on all fours to the case of the present petitioner and thus, the petitioner is entitled to the grant of the concession of regular bail on the said count alone.

17. In addition to the above-said facts, the following factors also lean in the favour of the petitioner for grant of regular bail: -

(i) As per the case of the prosecution, it was accused Rakesh Kumar Singla, who had supplied two consignments to accused Paramjit Kaur, who was proprietor of Brioshine Pharma and there was proof of Whatsapp messages exchanged between the two and even some proof of transfer of amount made by Rakesh Kumar Singla into the account of Harjinder Singh, husband of Paramjit Kaur. The Co-ordinate Bench of this Court has granted the concession of regular bail to the said Rakesh Kumar Singla, vide order dated 14.01.2021. The case of the petitioner is on a higher footing than that of the said Rakesh Kumar Singla. The relevant portion of the order passed in the said case is reproduced herein-below: -

“5. Per contra, Mr. Sanjay Vashisth, learned Advocate appearing on behalf of the Narcotics Bureau submitted that there has been a recovery of almost 57,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR), which is of commercial quantity. Paramjit Kaur has admitted to sending

the consignment to Bhavnish Kumar under her own signatures at the behest of the petitioner. She stated that she was totally unaware of the contents of the parcel sent to Balaji Traders at Ferozepur. It is also argued that there are screen shots of Whatsapp messages available with the NCB, which would connect the petitioner with the said contraband, as there is a message available showing transfer of an amount by the petitioner into the account of Harjinder Singh, husband of Paramjit Kaur. It is also argued that there are other persons involved in the sale and purchase of contraband as would be evident from the Whatsapp messages.

6. Mr. Sanjay Vashisth also submitted that the petitioner has admitted before the Investigating Officer that he knew Paramjit Kaur, who ran Brioshine Pharma at Panchkula, and she booked the said consignments on his asking and therefore, once having recorded his involvement in his own handwriting, he would not be entitled to the concession of regular bail

7. I have heard learned Advocate for the parties and with their assistance have gone through the paper book as well as the case laws cited.

8. The facts are not in dispute regarding seizure of two consignments sent by Paramjit Kaur to Bhavnish Kumar at Ferozpuer. Admittedly, both the consignments contained contraband of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR), which is of commercial quantity. The parcel that was sent on 10.06.2020 contained 37,000 tablets whereas the parcel that was seized on 12.06.2020 at Panchkula contained 20,000 tablets of aforesaid contraband. It is also admitted fact that Paramjit Kaur in her disclosure statement named Rakesh Kumar Singla, petitioner herein, as the person, who asked her to forward both the consignments to Bhavnish Kumar at Ferozepur, however, the learned Senior Advocate for the petitioner has urged that the said disclosure statement cannot be relied upon nor can any statement made by him in the judicial custody be relied upon as incriminating evidence against him.

9. A Division Bench of Hon'ble Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu (2013) 16 SCC 31*** while discussing the ratio laid down in decisions of ***Raj Kumar Karwal Vs. Union of India (1990) 2 SCC 409*** and ***Kanhiyalal Vs. Union of India (2008) 4 SCC*** and certain other judgments observed that the ratio laid down in the case of *Kanhiyalal Vs. Union of India (supra)* is required to be re-looked and thus, referred the matter to a Larger Bench. The matter was referred to a Larger Bench of three judges, who culled out following two issues for determination:-

“1. Whether an officer “empowered under Section 42 of the NDPS Act” and/or “the officer empowered under Section 53 of the NDPS Act” are “Police Officers” and therefore, statements recorded by such officers would be hit by Section 25 of the Evidence Act; and

2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exerciseable by an officer under Section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused.”

The Larger Bench in its judgment has concluded in para 152 that “a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20 (3) and 21 of the Constitution of India.” It was further held that the judgments rendered in ***Kanhiyalal (supra)*** and ***Raj Kumar Karwal (supra)*** do not state the correct law and are thus overruled. The reference was therefore answered by stating:-

“(i) That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

*10. In the instant case, the Narcotics Bureau is relying not only upon the statement given by a co-accused implicating the petitioner herein but also upon a statement given under Section 67 of the NDPS Act by the petitioner. The petitioner has been nominated as an accused on the disclosure statement of co-accused Paramjit Kaur who had sent the consignment to Ferozepur. The complicity of the petitioner will have to be determined by the quality of evidence led during trial. As far as the self-inculpatory statement relied upon, this Court is prima facie of the opinion that the ratio as laid down in the reference order in **Tofan Singh's case** would come to the aid of the petitioner to allow him the benefit of regular bail.”*

(ii) Even subsequent to the recording of the disclosure statement of the co accused Bhavnish Kumar and the recording of the statement of the petitioner under section 67 of the Act, neither any recovery has been effected from the present petitioner, nor there is any material/ allegation regarding transfer of money from the account of any of the co-accused to the account of the present petitioner.

(iii) Paramjit Kaur, who was the person who had been arrested on 12.06.2020, along with one of the consignments in the office of DTDC Courier Agency at Panchkula, had in her disclosure statement stated that the second consignment had been sent to Ferozepur and in her disclosure statement she had stated that the same was to be received by Bhavnish Kumar and had not even named the present petitioner in the said statement. The argument of learned counsel for the petitioner to the effect that in case the consignment was to be received by both, Bhavnish and the present petitioner, then, Paramjit Kaur would have mentioned the name of the present

petitioner also, cannot be outrightly rejected. The fact that the said Pramjit Kaur, in her disclosure statement, had not named the present petitioner as the person who, along with Bhavnish Kumar, had to receive the consignment, has not been disputed by the Ld. Counsel appearing for respondent-NCB.

(iv) Although, as per the case of the prosecution, the parcel carried the name of the present petitioner along with that of co-accused Bhavnish Kumar in the receiver details, but it is not in dispute that the said parcel was not received by the present petitioner and the same was not even received at any premises owned by the present petitioner.

(v) It is the case of the prosecution that the petitioner was in the car at the time when the said Bhavnish Kumar had gone to the office of the DTDC to receive the parcel in question and even managed to escape from there, however, considering the fact that the Narcotics Control Officer, Amritsar had prior information with respect to the consignment being received, it is an arguable point in favour of the petitioner as to how in the said circumstances the petitioner was not apprehended and had managed to escape.

(vi) With respect to the case of the prosecution, that there are several phone calls exchanged between the petitioner and Bhavnish, it would be relevant to note that there is no transcript regarding the same. A Division Bench of this Court in **Narcotics Control Bureau's case (supra)**, was pleased to observe as under:-

“Still further, no conversation detail between accused Ramesh Kumar Patil and accused Sandeep has been produced

by the prosecution. Mere call details is not sufficient to prove that Sandeep accused was also involved in the business of narcotic drugs or he had any connected with Ramesh Kumar Patil.

In view of the above, no case is made out for grant of leave to appeal against the acquittal of Sandeep accused.”

In judgment of the Gujarat High Court in **Yash Jayeshbhai Champaklal Shah's case (supra)**, it has been observed as under:-

“Having heard learned advocates for the appearing parties, it emerges on record that the applicant is not found in possession of any contraband article. Over and above that, the call data records may reveal that in an around the time of incident, he was in contact with the co-accused who were found in possession of contraband. Since there is no recording of conversation in between the accused, mere contacts with the co-accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused.”

A perusal of the above judgment would show that without the transcript of the conversations exchanged between the co-accused, mere call details would not be considered to be corroborative material in absence of substantive material found against the accused. Moreover, it is the case of the present petitioner that the said Bhavnish was earlier residing near the residential house of the petitioner and was on visiting terms with the petitioner and his family and even a perusal of the complaint (Annexure P-1) would show that both the said persons are residents of village Satyewala, Ferozpur. Moreover, as stated hereinabove, there is no phone call exchanged between the petitioner and Paramjit Kaur or Rakesh Kumar Singla, nor there is any

evidence showing any monetary transaction carried out between the petitioner and any of the co-accused.

(vii) The dismissal of the bail application of Paramjit Kaur by a Co-ordinate Bench of this Court vide order dated 14.01.2021 passed in CRM-M-28201-2020 would not call for dismissal of the bail application of the present petitioner, inasmuch as, it has been specifically recorded in paragraph No.9 of the said order that it was the said Paramjit Kaur, who had booked the said consignments in the name of her own firm and the consignment at Panchkula was opened in her presence as well as in the presence of DTDC officials, from which, 20,000 tablets of Tramadol Hydrochloride (Clovidol-100 SR) were recovered and it is on her statement that the further recovery of 37,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR) had been effected from co-accused Bhavnish at Ferozpur. Relevant para 9 of the said order passed in the case of accused Paramjit Kaur is reproduced herein below:

“9. It is admitted fact that the consignments were booked by the petitioner in the name of her own firm and she also identified the copy of challan of her firm Brioshine Pharma. The consignment at Panchkula was opened in the presence of the petitioner and independent witnesses as well as DTDC officials, out of which 20000 tablets of Tramadol Hydrochloride (Clovidol-100 SR) were recovered. Similarly, 37000 tablets of above said contraband was recovered from the consignment sent by the petitioner to Balaji Traders at Ferozepur. The quantity of contraband is of commercial quantity”

It would be also relevant to note that Paramjit Kaur was arrested on 12.06.2020 and on the date of dismissal of the said regular bail i.e., 14.01.2021, the said Paramjit Kaur had undergone around 7 months of custody, whereas the present petitioner has undergone more than 2 years and 1 month of custody. It would also be relevant to note that on the same date, the Co-ordinate Bench of this Court had granted bail to co-accused, namely, Rakesh Kumar Singla and the case of the petitioner is on a higher footing than that of the said Rakesh Kumar Singla, and thus, what comes to the fore is that the Co-ordinate Bench of this Court was of the opinion that the person from whom the recovery has been effected does not deserve the concession of regular bail.

(viii) With respect to the judgment passed by the Hon'ble Supreme Court in **Mohit Aggarwal's case (supra)**, it would be relevant to note that the facts in the said case were different from the facts in the present case. A perusal of para 4 of the said judgment would show that the said Mohit Aggarwal (respondent-accused therein) was the person who had sold the Tramadol tablets to Gaurav Kumar Aggarwal without any bill or prescription. In para No.7 as well as in para 16 of the judgment, it was observed that it was in pursuance of the information given in the disclosure statement of the said Mohit Aggarwal, that the NCB team had arrived at and had raided the godown of the co-accused Promod Jaipura, which had resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups and thus, the

disclosure statement made by the said Mohit Aggarwal could not be brushed aside. In the present case, no such recovery has been effected either from the present petitioner or on the basis of the disclosure statement made by the present petitioner. A reference to para No.8 of the said judgment would show that the custody undergone by the accused in the said case was of one year and three months, whereas, the custody undergone by the petitioner in the present case is of two years and one month.

(ix). In addition to the orders passed by the Hon'ble Supreme Court and of the Division Bench, as noticed in paragraphs 10 to 15 of this judgment, various other orders passed by the Hon'ble Supreme Court as well as various other Courts in cases involving commercial quantity, are also being taken note of. 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. 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”**.

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 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**; 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.

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 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

This also contributes towards the Court coming to the abovesaid satisfaction that the petitioner may not be guilty in the present case. In the considered opinion of this Court, first part of Section 37(1)(b)(jj) qua the satisfaction of the Court is fulfilled in this case.

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. However, it has come on record that earlier also, the petitioner was involved in a case, but he has been acquitted in that case. So his antecedents are also clear as of now. Moreover, since this Court has already recorded a prima-facie satisfaction that petitioner is not involved even in the present case and that earlier also the petitioner was involved in a false case, then this Court can, to some extent, venture to believe that the petitioner would not, in all likelihood, commit any offence after coming out of the custody, if at all, the Court is permitted any liberty to indulge in prophesy.

In view of the above, the present petition is allowed. The petitioner is ordered to be released on bail during trial. Let the petitioner be released on bail on his furnishing bail bonds/ sureties to the satisfaction of the trial Court.”

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. In view of what has been stated hereinabove, there are reasonable grounds to believe that the petitioner is not guilty of the offences he has been charged with. Moreover, the petitioner is not involved in any other case and has clean antecedents and thus, the observations made by the Coordinate Bench, which have been upheld by the Hon'ble Supreme Court, to the effect that the petitioner would not, in all likelihood, commit any offence after coming out of the custody, would apply in the present case while considering the provisions of section 37 of the Act.

18. Keeping in view the custody, stage of the trial and the fact that the petitioner is not involved in any other case, as has been detailed in Para No.16 of the present judgment, and also the law laid down by the Hon'ble Supreme Court as well as the Division Bench of this Court, as detailed in paragraphs 10 to 15 of the present judgment, and also the factors, as highlighted in paragraph 17 of the present judgment with respect to the merits of the case, this Court is of the view that the present petition deserves to be allowed and the petition is accordingly 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 he is 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.
19. 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.
20. However, keeping in view the observations made in paragraph 15 of the judgment of the Hon'ble Supreme Court in **Narcotics Control Bureau Vs. Mohit Aggarwal (supra)**, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

September 02, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes