

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-48050-2021(O&M)

Date of decision : 07.02.2022

Gurpreet Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Vipin Mahajan, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

CRM-3119-2022

Allowed as prayed for.

CRM-3120-2022

This is an application under Section 482 Cr.P.C. for placing on
record Annexures P-9 to P-13.

Allowed as prayed for. Annexures P-9 to P-13 are taken on
record subject to all just exceptions.

CRM-M-48050-2021

This is a first petition under Section 439 Cr.P.C. praying for
grant of regular bail to the petitioner in FIR no.67 dated 29.05.2020
registered under Sections 22, 29 of the Narcotic Drugs and Psychotropic
Substances Act, 1985 (in short 'NDPS Act') at Police Station Sadar

Gurdaspur, District Gurdaspur.

The FIR in the present case has been registered on the statement of ASI Satpal, who had stated that on 29.05.2020 he along with his colleagues was present at Bridge Mangal Sain, when the present petitioner was coming in a car, he was asked to stop and the petitioner disclosed his name and from whom, recovery of 2000 tablets of intoxicant tablets marked as Tramadol Hydrochloride 100 mg and clovidol-100 SR was effected and upon calculation, it had been discovered that the intoxicants tablets contained Tramadol Hydrochloride to the extent of 814 grams, which falls within the ambit of commercial quantity, as per the schedule of the NDPS Act.

Learned counsel for the petitioner has submitted that the present case is a case of false implication, on account of political consideration inasmuch as, the petitioner is son of Satnam Singh, who is the present Sarpanch of village Sant Nagar, Block Dhariwal, District Gurdaspur and belongs to Shiromoni Akali Dal party which is in opposition. It has further been submitted that in fact the petitioner was illegally picked up from village Kalyanpur, near the Government Primary School at 8:00 PM on 28.05.2020 by the police and was taken to the Police Station, Gurdaspur and all the paper work was done by the police while sitting in the police station and the alleged intoxicants tablets were planted on the petitioner. It has further been submitted that occurrence which has been shown in the FIR, is stated to have occurred, i.e. at 23.10 hours (11:10 PM on 28.05.2020) whereas, the petitioner had been illegally picked up by the police party at 8:00 PM, on 28.05.2020. The petitioner had moved an application before the trial Court for preserving the call details of the police

party and reference has been made to the said application (Annexure P-4). Reference has also been made to an order passed by a co-ordinate Bench of this Court on 02.07.2020 (Annexure P-6) with respect to said application. It has further been argued that the fact that the documents were prepared at the police station, is also clear from a perusal of non-consent memo and consent memo (Annexures P-10 and P-11) and perusal of said documents would show that as per the same, the FIR number in the case had already been recorded, even though, the FIR was registered on 29.05.2020 at 2.50 AM (page 36 of the paper book). It has been argued that the details of the FIR have been mentioned in both the documents with the same handwriting and the same pen as the non-consent memo and the consent memo bear. It has further been argued that in the present case, ruqa has been sent on 29.05.2020 at 01:45 AM and since as per the settled law, non-consent memo and the consent memo are taken prior to the recovery and the FIR is registered subsequent to the same, thus mentioning the FIR number in the same handwriting as the said two documents, shows that the documents have been prepared after the registration of the FIR in the police station.

Learned counsel for the petitioner in support of his arguments, has relied upon a judgment of Division Bench of this Court in ***Didar Singh @ Dara vs. The State of Punjab***, reported as ***2010(3) RCR (Criminal) 337*** as well as the judgment of a coordinate Bench passed in ***CRM-M-10343-2020*** titled as “***Ajay Kumar @ Nannu vs. State of Punjab***”, decided on 31.03.2021 and connected matters as well as the judgment of the coordinate Bench dated 28.01.2021 passed in ***CRM-M-36504-2020*** titled as “***Rajandeep Singh @ Ghugli vs. State of Punjab***”. It has further been submitted that the petitioner is not involved in any other case and was

initially arrested on 29.05.2020 and was granted interim bail on 30.06.2020 but thereafter, since 02.09.2021, he has been in custody and in the present case, there are 18 prosecution witnesses, out of which, one has partially been examined and thus, the trial is likely to take time moreso, in view of present pandemic and has, thus, prayed for concession of regular bail.

Learned State counsel has opposed the present petition for grant of regular bail and has submitted that mere mentioning of FIR in the non-consent memo and the consent memo cannot vitiate the recovery and the recovery in the present case effected from the petitioner amounts to 814 grams, which is commercial quantity and thus, grant of bail to the petitioner is barred as per Section 37 of the NDPS Act.

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

It is not in dispute that in the present case, the petitioner as per the FIR (page 36 of the paper book) was apprehended at 23:10 hours (11:10 PM) on 28.05.2020. It is further not in dispute that the ruqa in the present case has been sent at 1:45 AM on 29.05.2020 and the FIR has been registered on 29.05.2020 at 02:50 AM. It is the case of the petitioner that he is the son of the present Sarpanch of village Sant Nagar, Block Dhariwal and belongs to Shiromani Akali Dal which is the party in opposition and the petitioner has been implicated in the case solely on account of political consideration and had been picked up from village Kalyanpur near Government Primary School at 08:00 PM on 28.05.2020 and the recovery effected has been planted on the petitioner. In support of said arguments raised, learned counsel for the petitioner has highlighted that an application dated 06.05.2021 was also filed by the petitioner before the trial Court for

directing the Nodal Officers to preserve the tower location and other call details of the mobile numbers of the police party. Although, the said application was dismissed but the petitioner had filed a petition before this Court, i.e. CRM-M-21798-2021 in which case, on 02.07.2021, a coordinate Bench of this Court was pleased to pass the following order:-

“By this petition, the petitioner challenges the order of the Special Judge, Gurdaspur, dated 24.05.2021, by which the application filed by the petitioner on 29.05.2020, seeking preservation of the phone call records of certain mobile phone numbers given in the application, has been dismissed.

Learned counsel for the petitioner points to what has been observed by the Special Court, to the effect that it has been held that the applicant had not disclosed the names of the persons to whom the mobile numbers referred in the application belong, and further, that the purpose for which the call detail records and tower locations were required by the applicant was also not given.

It has next been held that call details of any official cannot be given as it can be “dangerous for the privacy and the safety of the such official.”

Learned counsel for the petitioner next points to Annexure P-3, which is a copy of the list of prosecution witnesses stated to have been furnished to the trial court alongwith the report under Section 173 Cr.P.C., from which he submits that some of the numbers given in the application are the same as some of the prosecution witnesses.

He next submits that very obviously the numbers were required for the petitioner to prove that the officials of the police party that had apprehended him were actually not present at the spot where they are

shown to be present in the FIR, (where the petitioner is contended to have been apprehended).

Though of course correctly the reason for preserving the tower locations of the said mobile phone numbers should have been given in the application, however, in my opinion the trial court was not justified in dismissing the application, as it would normally be obvious as to why the numbers were required to be preserved.

*Learned counsel for the petitioner also cites a judgement of the Supreme Court in **Suresh Kumar vs. Union of India, 2015 (3) RCR (CrL.) 340**, to submit that the Supreme Court has also held that an applicant has every right to summon whatever evidence is relevant and admissible in his defence, including electronic record relevant to finding out the location of the officers effecting the arrest (reference paragraph 7 of the said judgment, Law Finder Edition).*

He also relies upon a judgment of this court in CRM-M-42664-2020, decided on 15.01.2021, to the same effect.

Notice of motion.

Mr.Saurav Khurana, DAG, Punjab, accepts notice at the asking of the court on behalf of the respondent State.

A copy of the petition be e-mailed to him today itself by learned counsel for the petitioner.

A reply be filed positively by the SSP, Gurdaspur, as to why the State was opposing the application before the learned trial court, because the function of the State is to try and ensure that justice is given to somebody and not simply to protect its officers who may (or may not) have acted as per procedure/law, in the apprehension of an accused.

Consequently, a direction is now issued that the

SSP, Gurdaspur, shall immediately, within one day of receiving a copy of this order, apply to all the mobile phone companies concerned, to preserve the mobile phone call details of the numbers that the petitioner was seeking to be preserved, (as per his application before the trial court).

This court is naturally aware that normally the stand taken by a mobile company is that call detail records are kept only for one year and in this case the FIR being dated 29.05.2020, slightly over 13 months having gone by since then; but nevertheless, it is not a mandatory provision that all mobile call detail records must be deleted after one year and very often the call detail records are kept by companies far far beyond one year, as this court has seen on different occasions.

The affidavit of the SSP, Gurdaspur, be filed at least one week before the next date of hearing before this court, failing which he shall remain present in court (via video conferencing) on the next date of hearing itself.

Adjourned to 04.08.2021.

July 02, 2021
dharamvir/

Sd/-
(AMOL RATTAN SINGH)
JUDGE”

A perusal of the above order would show that while issuing notice of motion, the coordinate Bench had directed the SSP, Gurdaspur, to file a reply as to why the State is opposing the said application before the trial Court. The said case is stated to be pending. A perusal of the non-consent memo dated 29.05.2020 as well as the consent memo dated 29.05.2020 (Annexures P-10 and P-11) and its vernacular, would show that the all documents have been written with the same handwriting and they also bear the FIR number along with date of the FIR, i.e. 29.05.2020 as well

the FIR are, thus, mentioned in the said documents. The Division Bench in

Didar Singh @ Dara's case (supra) had observed as under:-

*“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In **Ajay Malik & Ors. v. State of U.T. Chandigarh, 2009(3) RCR (CrI.) 649**, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e. either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.*

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32. In view of the aforesaid discussion, the appeal is allowed and the impugned judgment of conviction and order of sentence passed by the Judge, Special Court, Amritsar are set aside. The appellant, who is in custody, be set at liberty forthwith if not required in any other case.”

case (supra) had held as under:-

*“(iii) that mentioning of number of FIR and additional offences in the recovery memo shows manipulation and fabrication of recovery memo subsequently in the police station which denudes recovery memo of any sanctity and strikes out integrity and shatters credibility of the prosecution version and entitles the petitioners to grant of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in judgments passed in **Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H); Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H);** where mentioning of subsequent details in recovery memo was held to affect sanctity/credibility of recovery memo and **Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M- 44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M- 34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-2212- SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and***

Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 where bail was granted/ suspension of sentence was allowed on this ground.

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16. In ***Mustakeem @ Sirajudeen Vs. State of Rajasthan : AIR 2011 SC 2769*** it was held by Hon'ble Supreme Court that if the recovery memos were prepared at the Police Station itself then the same would lose its sanctity. In ***Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H)*** it was held by this Court that presence of FIR details on recovery memos etc. leads to two inferences: either the FIR was registered prior to the alleged recovery of contraband or the number of FIR was inserted in these documents after its registration in both the situations it seriously reflects upon the integrity of the prosecution version. This view was upheld and reiterated by the Division Bench of this Court in ***Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H)*** and mentioning of such details in recovery memo was held to affect sanctity/credibility of recovery memo. In ***Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-***

2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-6504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 bail was granted/suspension of sentence was allowed on this ground.

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20. *In view of the above, the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing of personal bond and bond of one surety in heavy amount to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”*

Similarly, a coordinate Bench of this Court in ***Rajandeep Singh @ Ghughi's*** case (supra) had held as under:-

*“In this backdrop, the submission made by Ld. Counsel for the petitioner is that in view of the decision of the Supreme Court in **Ram Chander Sharma @ Pandit v. State (NCT Delhi) Criminal Appeal No. 1809 of 2009**, the existence of the FIR on the recovery memo when the FIR was not itself drawn up would point to the case against the petitioner being a fabricated one. Reliance has thereafter been placed upon an earlier decision of this Court in **Ajay Malik v. State of U.T. Chandigarh, 2009(3) RCR (Crl.)649 (P&H)** which was thereafter followed by the Division Bench in the decision of **Didar Singh @ Dara v. State of Punjab, 2010(3) RCR (Criminal) 337 (P&H) (DB)**. Various Benches of this Court have subsequently granted bail to such accused persons in view of these decisions wherever number of the FIR was seen to have been noted down in the*

documents purported prepared before registration of the FIR itself.

[(i) CRM-M-38153-2019 titled Satish Kumar v. State of Punjab;

(ii) CRM-M-42370-2019 titled Tarsem Lal v. State of Punjab;

(iii) CRM-M-44921-2019 titled Gurdeep Singh v. State of Punjab;

(iv) CRM-M-32615-2018 titled Rinku Singh v. State of Punjab;

(v) CRM-M-61999-2018 titled Jatinder Vashisht v. State of Punjab;

(vi) CRM-M-34433-2019 titled Harvinder Singh @ Shammi v. State of Punjab.]

Similarly in :-

(vii) CRM-20778-2018 in CRA-S-2212-SB-2016 titled Kashmir Singh @

Kokki v. State of Punjab; and

(viii) CRM-19587-2019 in CRA-S-2884-SB-2016 titled Charno v. State of Punjab, the benefit of suspension of sentence even in favour of the convicts was granted by this Court for the same reason, i.e. existence of the F.I.R. number on the Recovery Memo/ Documents prepared before registration of the F.I.R.”

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[8] In addition, Ld. Counsel for the petitioner has separately relied upon an appropriate format of the Recovery Memo pertaining to Heroin in FIR No. 232 dated 24.09.2016, Police Station Chheharta Amritsar to demonstrate in what manner the relevant FIR number is to be shown. Perusal of the same goes to show that the recovery from the concerned accused Karan Singh @ Karan s/o Watan Singh was purportedly effected on 23.09.2016, but the relevant FIR No. 232 dated 24.09.2016 was separately entered on the margin which

was totally distinct from the original contents with a separate/categorical noting that the memo in question pertains to the said FIR drawn up on the following day. The said document is now tagged as Annexure 'X' with the record. It would, therefore, be clear that such format was being followed by the Narcotic Cell Authorities of the area for more than three years prior to the apprehension of the petitioner in the present case, and so mentioning of the FIR number in the very beginning of the Recovery Memo as done in the present case, and not by way of a subsequent explanatory endorsement to indicate that it relates to the relevant FIR drawn up subsequently, would only go to support the contention raised on behalf of the petitioner.

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[11] The petition is, therefore, allowed and the petitioner is directed to be released on bail to the satisfaction of the Ld. Trial Court/ Duty Magistrate, concerned.”

Perusal of the above said judgments would show that Division Bench as well as coordinate Bench of this Court had considered the contention raised by learned counsel for the present petitioner to be one of the points while granting regular bail to the petitioner therein. Even in a case involving commercial quantity, it was observed that in such a situation only two inferences can be drawn, i.e., either the FIR was registered prior to the alleged recovery of contraband or the number of the FIR has been inserted in the document after its registration and both situations seriously reflect upon the integrity of the prosecution version and the same is a serious lapse in the prosecution case and creates a doubt in the prosecution theory. The coordinate Bench of this Court in ***Rajandeep Singh @***

Ghughi's case (supra) had even explained as to how an entry was to be made with respect to the FIR which was entered into subsequently and it was observed that separate/categorical noting to the effect that FIR and its number having been mentioned, should be made. The same has not been done in the present case. The said aspects as well as the aspect which have been highlighted by learned counsel for the petitioner with respect to call details and also the fact that the present petitioner is the son of the present Sarpanch, are arguable points in favour of the petitioner, which would finally be considered and adjudicated upon during the course of the trial. The petitioner is stated to be not involved in any other case. The petitioner remained in custody from 29.05.2020 till 30.06.2020 and he was granted interim bail on 30.06.2020 but thereafter, since 02.09.2021, he has been in custody and there are 18 prosecution witnesses in the present case and out of which, only one witness has been examined partially and thus, the trial is likely to take time moreso, in view of the present pandemic.

Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, there the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, 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 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

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 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:

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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 *Ajay Kumar @Nannu's* case (supra) as has been stated in the preceding paragraph, 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 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 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. It is apparent that to meet the requirement of Section 37 of the NDPS Act, 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. This Court is of the opinion that in the present case, there are several arguable points which have been raised by the learned counsel for the petitioner and the petitioner was initially arrested on 29.05.2020 and was granted interim bail on 30.06.2020 and thereafter, since 02.09.2021, he has been in custody and the same is sufficient to entitle the petitioner for grant of regular bail. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

Accordingly, the present 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 trial Court / Duty Magistrate, 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, 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.*

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail

However, 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.

(VIKAS BAHL)
JUDGE

February 07, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No