

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(220)

CRM-M-49455-2021

Date of decision: - 19.01.2022

Sukhdeep Singh alias Sukha

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Ravi Malhotra, Advocate,
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail in FIR No.87 dated 16.06.2021, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Dakha, District Ludhiana.

The case of the prosecution is that ASI Narinder Kumar along with ASI Lakhvir Singh, senior constable Paramvir Singh and senior lady constable Mandeep Kaur were present at the main chowk of Mandi Maullanpur, when a special messenger came and informed the said persons that the petitioner, who was dealing in intoxicant tablets, would sell the same from village Dakha to village Issowal and in case the

barricading was to be done, the said petitioner could be apprehended. It is further the case of the prosecution that as is apparent from the report under Section 173 Cr.P.C., in spite of the fact that the said barricading was done, the petitioner managed to run away from the spot after throwing the polythene bag but he was recognized by the senior constable Paramvir Singh and on checking the said bag, 800 tablets of 100 MG SR Tablets RADOL-100 containing the salt-Tramadol Hydrochloride, were recovered from the said polythene bag. It is further the case of the prosecution that the petitioner was thereafter arrested on 09.07.2021.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been falsely implicated. It is argued that it is impossible to believe that the petitioner, who was on foot, managed to escape in spite of the fact that there were several police officials present at the spot. It is further submitted that the allegation to the effect that the petitioner is dealing in intoxicant tablets is also false inasmuch as, he is not involved in any other case. Learned counsel for the petitioner has argued that the petitioner has been in custody since 09.07.2021 and the challan has already been presented and there are 10 prosecution witnesses, none of whom have been examined and thus, the trial is likely to take some time to conclude. It is also submitted that as per the FSL report, the total quantity of the narcotic drugs that has been detected is 268.8 grams and the commercial quantity of the same is stipulated at 250 grams.

Learned counsel for the petitioner has relied upon an order passed by a Co-ordinate Bench of this Court in **CRM-M-13662-2020**

titled as '**Niranjan Kumar @ Kaka Vs. State of Punjab, decided on 06.07.2020**, to contend that in such like cases, it could not be stated that the petitioner/accused person was in conscious possession of the alleged narcotic drug.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that in the present case although, the petitioner was not arrested at the spot, but he was identified by senior constable Paramvir Singh although, the facts with respect to the custody and the petitioner not being involved in any other case, however, have not been disputed by learned State counsel.

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

It is not in dispute that in the present case, there was secret information on the basis of which the barricading was done and there were several police officials present on the spot at the relevant time. It is also not in dispute that as per the prosecution version, the petitioner was on foot and yet, he was not arrested in spite of the presence of several police officials. A Co-ordinate Bench of this Court in **Niranjan Kumar @ Kaka's case (supra)** had observed that where the recovery has been made from the ground, the accused petitioner is entitled for the concession of regular bail.

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 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 NDPS Act in extenso and had granted bail in a case which involved commercial quantity. The relevant portion of the said judgment is reproduced as under: -

“ xxx—xxx—xxx

But, so far as second part of Section 37 (1) (b) (ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of the petitioner as to what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any offence' or 'offence under NDPS Act' after being released on bail, then this court, also, does not have any reasonable ground to be satisfied

that the petitioner is likely to commit any offence after he is released on bail. Hence, this satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner.”

The Special Leave Petition (Criminal) Diary No.42609 of 2018 filed against the aforesaid judgment of the Co-ordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

Further, vide order dated 25.02.2021 in CRM-M-20177-2020, a Co-ordinate Bench of this Court granted regular bail to an accused who was involved in a case wherein recovery was of 3.8 kgs of “charas” (commercial quantity) after being in custody for 1 year and 7 months. The said order was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021 titled as “**Narcotic Control Bureau v. Vipin Sood and another**”.

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.

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.

A Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as “**Ajay Kumar @ Nannu v. State of Punjab**” and other

connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, was pleased to grant regular bail in a case involving commercial quantity and a condition was imposed on the petitioner therein while granting the said bail and the said condition was incorporated in para 21 of the said judgment, which reads as under: -

“21. However, the petitioners are granted regular bail subject to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.”

Further, a Division Bench of this Court vide judgment dated 31.08.2021 passed in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, **Harpal Singh v. National Investigating Agency and another**, granted 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. It is apparent that in order 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 feels that in the present case, there are arguable points and even the fact as to whether the recovery is from the conscious possession of the petitioner or not, moreso, when the petitioner was stated to be on foot was not apprehended at the spot in spite of the presence of several police officials, would be a matter of debate during the course of trial. The petitioner is not involved in any other case and he has been in custody since 09.07.2021 and there are as many as 10 prosecution witnesses, none of whom have been examined and thus, the trial is likely to take some time to conclude, moreso, in view of the present pandemic. 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 ordered 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 before this Court.

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 application.

January 19, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No