

Jagtar Singh alias Jagga

...Petitioner

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Amardeep Singh, Advocate for the petitioner.

Mr. Ayush Sarna, AAG, Punjab.

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B.S. Walia, J. (Oral)

1. Prayer in the second petition under Section 439 of Cr.P.C. is for grant of regular bail to the petitioner during pendency of trial in case FIR No.0325 dated 10.11.2020, registered under Section 22 of the Narcotics Drugs and Psychotropic Substances Act, 1985, at Police Station Kathu Nangal, District Amritsar.

2. Learned counsel contends that CRM-M-30963-2021, was permitted to be withdrawn at that stage vide order dated 18.08.2021 whereas the instant petition has been filed subsequently on account of no progress having been made in the trial.

3. Learned counsel contends that the petitioner is in custody since 10.11.2020, challan has been presented, charges have been framed and out of 11 prosecution witnesses not even a single prosecution witness has been examined. Learned counsel contends that the petitioner is entitled to be released on regular bail in view of the decision of Hon'ble the

Supreme Court in Chhita Biswas alias Subhas vs. State of West Bengal, SLP (Crl.) No.8823 of 2019, law finder doc ID #1938935, Narcotic Control Bureau vs. Vipansood and another, Special Leave to Appeal (Criminal) No.5852 of 2021, upholding the order of a coordinate bench of this Court granting regular bail to accused therein vide order dated 25.02.2021, in CRM-M-20177-2020 as also in view of the decision of this Court in Amritpal Singh vs. State of Punjab CRM-M-53334-2021, decided on 07.04.2022. Learned counsel for the petitioner also refers to order dated 31.05.2021, to contend that there is violation of Section 50 of the NDPS Act and that in view of the decisions of this Court in case titled as **Gannu and another vs. State of Punjab 2017 (3) RCR (Criminal) 566**, **Kewal Krishan vs. State of Punjab 2018 (4) RCR (Criminal) 580** and **Manorama Devi vs. State of Haryana 2018 (2) RCR (Criminal) 339**, entire proceedings stand vitiated and that continued detention of the petitioner is illegal, in view of mentioning of FIR number in the recovery/arrest memo.

4. Learned AAG, Punjab, does not dispute that the petitioner has been in custody since 10.11.2020, challan has been presented, charges have been framed, and out of eleven prosecution not even a single witness has been examined till date and that the recovery from the petitioner was of 860 intoxicant tablets and the salt in the same was 'alprazolam' and as per Sr. No.178 of the Central Government Notification, the salt 'alprazolam' above 100 grams falls in commercial quantity, besides, as per report of the Chemical Examiner, 'alprazolam' salt was found in the contraband and total weight of the same was 125.5 grams, which falls in the category of commercial quantity. However, learned AAG, Punjab, has not cited any

judgment contrary to the judgments cited by learned counsel for the petitioner but states that the petitioner is involved in another case under the NDPS Act i.e. FIR No.323 dated 09.11.2020, registered under Section 22 of the NDPS Act on the basis of disclosure statement of the co-accused but concedes that no recovery was effected from the petitioner in said case.

5. I have considered the submissions of learned counsel for the parties.

6. In Chitta Biswas alias Subhas's case (supra), before Hon'ble the Supreme Court, it was argued that the petitioner therein had been in custody for one year, six months and seventeen days and out of ten prosecution witnesses only four witnesses had been examined before the trial Court, recovery in said case from the petitioner therein was of 46 bottles of phensydryal cough syrup containing codeine mixture above commercial quantity, prayer for regular bail under Section 439 of Cr.P.C. was rejected by Hon'ble the Calcutta High Court but Hon'ble the Supreme Court was pleased to grant regular bail to the petitioner therein in view of the facts and circumstances on record, subject to the petitioner furnishing bail bonds in the sum of Rs.2 Lakh with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar as also by granting liberty to the learned Special Court to impose any such other condition as it deemed appropriate to ensure the presence and participation of the petitioner in the pending trial.

7. Co-ordinate Bench of this Court in CRM-M-20177-2020, in case titled as Vipansood Vs. State of Punjab and another decided on 25.02.2021, allowed regular bail to the petitioner therein in a case

petitioner therein had been in custody for more than one year and seven month, co-accused had been granted regular bail vide order dated 15.10.2020, challan had been presented and the trial was likely to take a long time to conclude. Hon'ble the Supreme Court vide order dated 24.08.2021, in case titled as Narcotic Control Bureau vs. Vipansood and another, dismissed Special Leave to Appeal (Criminal) No.5852 of 2021 against said decision.

8. In Amritpal Singh's case (supra), reference was made to the decision of a Coordinate Bench in Ankush Kumar alias Sonu vs. State of Punjab, 2018 (4) RCR (Criminal) 84, wherein Section 37 of the NDPS Act was considered in-extenso and bail was granted in a case involving recovery of commercial quantity of contraband. Relevant extract of the decision in Ankush Kumar alias Sonu's case (supra) 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.

9. In Amrtipal Singh's case (supra), reliance was also placed on the decision in Vipin Sood's case (supra) as also to the decision of Hon'ble Supreme Court upholding the said decision, involving commercial quantity of 3.8 kgs of charas, on account of the petitioner therein being in custody for a period of one year and seven months. The said order was upheld by Hon'ble the Supreme Court vide order dated 24.08.2021, passed in SLP (Crl.) No.5852 of 2021. In Amit Singh alias Moni vs. Himachal Pradesh, Criminal Appeal No.668 of 2020, Hon'ble the Supreme Court vide order dated 12.10.2020, granted regular bail to the appellant therein in a case involving 3 kg 800 grams of charas primarily on the ground of substantial custody as also that the trial would take long time to conclude.

10. In Ajay Kumar alias Nannu vs. State of Punjab and other connected matters, a Coordinate Bench of this Court vide order dated

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 bail and the said condition was incorporated in para No.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.”*

10. Reference was also made to the decision of Hon’ble Division Bench of this Court dated 31.08.2021, in CRM-8262-2021 in CRA-S-3721-SB-2015, in case titled as Harpal Singh vs. National Investigating Agency and another, wherein suspension of sentence was allowed in a case where the recovery was of commercial quantity. In the above mentioned order, Hon’ble the Division Bench took into account the right vested with the accused/convict under Article 21 of the Constitution of India for a speedy trial.

11. Reference has also been made to the decision of Hon’ble the Supreme Court in **State (NCT of Delhi) vs. Lokesh Chadha (2021) 5 SCC 724**, wherein the Hon’ble Supreme Court after considering the scope of Section 37 of NDPS Act, was pleased to suspend the sentence of the applicant, after primarily considering the period of custody as also the fact that the appeal was not likely to be heard in the near future.

12. Accordingly, in view of the fact that the petitioner is in custody since 10.11.2020, challan was filed on 22.06.2021 thereafter, charges were framed on 10.09.2021 and out of 11 prosecution witnesses, none has been examined till date, recovery is of 125.5 gms of 'alprazolam' i.e. marginally higher than the commercial quantity of 100 gms, the other case in which the petitioner is involved is on the basis of disclosure statement and no recovery was made from him and the petitioner is on bail in said case besides the petitioner has made out an arguable point in the light of decision in Gannu and another's case (supra), Kewal Krishan's (supra) and Manorama Devi's case (supra), the instant petition is allowed and the petitioner is ordered to be released on regular bail during the pendency of the trial, subject to his furnishing bail / surety bonds to the satisfaction of the learned CJM / Trial Court / Duty Magistrate, concerned, provided he is not 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(s) 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 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.

**(B.S. Walia)**  
**Judge**

11.07.2022  
rajesh

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|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |