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

CRM-M-52553-2021 (O&M)
Date of decision : 15.09.2022

Karam Singh @ Happy

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Akshay Jain, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.90 dated 18.08.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) at Police Station Chamkaur Sahib, District Rupnagar.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 18.08.2021 and the investigation is complete and challan has been presented and there are 11 prosecution witnesses, out of which, 5 witnesses are yet to be examined and thus, the conclusion of the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case. It is argued that in the present case, even as per

the case of the prosecution, at 10:30 PM, the police officials had seen the petitioner coming on foot and the petitioner had then entered a house and reached the roof of the house and had thrown a black colour polythene bag on a vacant plot and the recovery of black colour polythene bag has been effected from the said vacant plot and thus, the same cannot be said to have been effected from the conscious possession of the petitioner and has relied upon a decision of a Coordinate Bench of this Court in **CRM-M-16150-2021 dated 19.07.2021** titled as '**Balwinder Singh Vs. State of Punjab**', and on judgement in **CRM-M-33733-2020 dated 15.03.2021** titled as '**Manjit Singh Vs. State of Punjab alongwith connected matters**', to contend that in such a situation, it is matter of debate as to whether the petitioner could be stated to be in conscious possession of the narcotic tablets in question or not.

On the other hand, learned State Counsel, has opposed the present petition for grant of regular bail to the petitioner and has submitted that the police officials had seen the petitioner throwing the black colour polythene bag containing the intoxicant tablets and thus, it cannot be said that the petitioner was not in conscious possession of the intoxicant tablets. It is further submitted that recovery effected in the present case is 88 grams of Diphenoxylate Hydrochloride tablets and the same would fall within the ambit of commercial quantity as the stipulated commercial quantity of the same starts from 50 grams. It is contended that thus, the bar under Section 37 of the Act of 1985, would apply. The other facts, however, have not been disputed by the learned State Counsel.

This Court has heard learned counsel for the parties and has

gone through the paper-book.

In **Balwinder Singh's** case (Supra), a Coordinate Bench of this Court has held as under:

“Briefly stated, case of the prosecution against the petitioner is that on 04.03.2019 police party headed by ASI Ravinder Singh on patrolling duty were coming to Tehang Octroi via Saiflabad. When they reached near Civil Hospital, Phillour they saw the petitioner coming on foot who on seeing the police party threw one heavy weight black coloured polythene bag and tried to run away. The police apprehended the petitioner and on search as per prescribed procedure recovered 55 intoxicant injections containing Buprenorphine 2 ml each and 55 injections containing Avil 10 ml each from the polythene bag.

XXX---XXX---XXX

On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession commercial quantity of intoxicant injections. Rigors of Section 37(1)(b) are fully applicable to the case of the petitioner. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In CRM-M-13662-2020 titled as 'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474- 2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRMM6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018 and CRM-M16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on

13.08.2020 where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the accused, the case was considered to involve question as to whether the accused could be said to be in conscious possession thereof and the accused was granted regular bail.

In 'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020 where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by Hon'ble Supreme Court.

In the present case recovery of intoxicant injections was allegedly made from polythene bag allegedly thrown on the road side. The case involves debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the polythene bag lying on the road side. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act stand satisfied by due implication. Further, the petitioner is in custody since 04.03.2019. Prosecution evidence is yet to be recorded. The trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.”

A perusal of the above judgment would show that although in the said case also, the recovery effected was of commercial quantity but, since the recovery of the polythene bag therein was also after the same had been thrown on the ground, thus, it was observed that it was a debatable issue whether the petitioner could be said to be in conscious possession of the narcotic or not. It was also observed that the rigors of Section 37(1) (B) of the Act of 1985 stood satisfied by due implication.

Even in ***Manjit Singh's*** (supra) case, a Coordinate Bench of this Court dealt with a case in which, the allegation was that the petitioner therein was holding a polythene bag and on seeing the police party, he threw the said polythene bag. It was observed that it was not possible to conclude that the recovery effected was made from the conscious possession of the petitioner therein or not. The said case was also a case of commercial quantity.

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.

In the present case, the petitioner is in custody since 18.08.2021 and the investigation is complete and challan has been presented and out of 11 prosecution witnesses, 5 witnesses are yet to be examined and thus, the conclusion of the trial is likely to take time. The petitioner is stated to be not involved in any other case and the prosecution witnesses are stated to be the official witnesses and thus, question of influencing them does not arise. On the basis of arguments raised by the learned counsel for the petitioner as well as in view of law laid down in the abovesaid judgments, the petitioner has strong arguable points which would be finally adjudicated during the

course of trial and thus, there is a reasonable ground to believe that the petitioner may be acquitted by the trial Court. However, the said facts would be finally adjudicated during the course of trial. Since, the petitioner is stated to be not involved in any other case and also keeping in view the judgment passed in **Ankush Kumar @ Sonu's case** (Supra) which has been upheld by the Hon'ble Supreme Court, it could be reasonably said that the petitioner would not indulge in the criminal activities in the future.

Keeping in view the abovesaid facts and circumstances as also the law laid down in the abovesaid judgments, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the Act of 1985.

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 an 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/her 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 an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

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

15.09.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No