

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(206)

CRM-M-53161-2021 (O&M)

Date of decision: - 25.05.2022

Hardeep Singh @ Happy @ Harjit Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Chandan Singh Rana, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.71 dated 23.06.2021, registered under Sections 22-61-85 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Sadar Raikot, Ludhiana.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 23.06.2021 and the challan has already been presented and there are total 11 prosecution witnesses, none of whom have been examined. It is further submitted that the petitioner is not involved in any other case and yet on the basis of a secret information, it has been mentioned that the petitioner is indulging in selling the intoxicant tablets. It is also submitted that the police party was in a private vehicle and even as per the allegations in the report under Section 173

Cr.P.C., it is the case of the prosecution that on seeing the police party the petitioner threw the polythene bag on the ground, which he had been stated to be holding in his hand and tried to flee from the spot. It is thus submitted that as per the case of the prosecution, the recovery is not 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.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that as per the challan, the police party on seeing the petitioner threw a black coloured polythene bag, which contained narcotic drugs i.e., 264.75 grams of Tramadol Hydrochloride Tablets, which is commercial quantity, inasmuch as, the commercial quantity for the same starts from 250 grams and thus, in the present case, it cannot be said that the petitioner was not in possession of the above-said intoxicant tablets.

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.

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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 'Niranjana 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-M-16380-2020 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 NDPS Act 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.

In the present case, the petitioner has been in custody since 23.06.2021 and the challan has already been presented and there are total 11 prosecution witnesses, none of whom have been examined and thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case. All the prosecution witnesses are stated to be official witnesses and thus, the question of influencing them would not arise. As per the case set up by the prosecution in the report under Section 173 Cr.P.C., the petitioner had thrown a black coloured polythene bag on seeing the police party and thus, the question whether the petitioner was in conscious possession of the above-said narcotic tablets, would be a matter of debate, which would be adjudicated finally during the course of the trial.

Keeping in view the above-said facts and circumstances, 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 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.

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 petition.

Pending application(s), if any, shall stand disposed of in view of the above-said order passed.

May 25, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
No