

Amritpal Singh

...Petitioner

vs.

State of Punjab

...Respondent

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

Present: Ms. Isha Goyal, Advocate for the petitioner.

Ms. Deepali Puri, Addl. AG, Punjab.

B.S. Walia, J. (Oral)

1. Prayer in the second petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.140 dated 23.10.2020, registered under Sections 21/25/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station City STF, District SAS Nagar, Mohali, CRM-M-20923-2021, filed earlier having been withdrawn vide order Annexure P/7 dated 26.10.2021, with liberty to file a fresh petition in accordance with law at appropriate stage, if the circumstances of the case so warranted.

2. Learned counsel contends that more than 5 months have lapsed and not even a single witness has been examined out of 20 prosecution witnesses, the petitioner is in custody since 23.10.2020, challan has been presented on 15.03.2021, charges have been framed besides co-accused, Varun, against whom identical allegations are there was granted regular bail vide order Annexure P/8 dated 18.11.2021, in CRM-M-28023-2021, that recovery of 300 grams of heroin is marginally

considerable period of time besides the petitioner was blessed with a son on 07.10.2020 and said child was born with one kidney, therefore, is required to be operated upon, that there is no male member or earning member in the family to look after the child.

4. Learned Addl. AG, Punjab, on the other hand, contends that the petitioner is involved in five other cases. In response thereto, learned counsel for the petitioner contends that the petitioner has been implicated in false cases as in three of the cases, the recovery is of 1.9 grams, 2 grams and 5 grams respectively while in two other cases, the recovery is of 10 grams and 20 grams of contraband respectively. The same has not been disputed by the learned Addl. AG, Punjab.

5. Learned Addl. AG, Punjab, by referring to the report U/s 42 of the NDPS Act, dated 23.10.2020, contends that a telephonic call was made to Mr. Vavinder Kumar, Deputy Superintendent of Police, on his mobile and he was apprised about the information given by the special informer, therefore there is compliance with Section 42(2), NDPS Act.

6. Learned counsel for the petitioner on the other hand refers to the decision of Hon'ble the Supreme Court in Rajinder Singh vs. State of Haryana, Criminal Appeal No.1051/2009 decided on 08.08.2011, as per which, conviction of the accused was set aside on the ground that information was not recorded in writing nor any information was sent to the superior officers as required under Section 42(2) of the NPDS Act and only a wireless message was sent to the DSP of the Police.

7. Learned counsel for the petitioner contends that although the State has placed before this Court a memo alleging compliance with Section 42 of the NPDS Act, yet the same is not part of the challan, therefore, its admissibility as also whether there was compliance with

Section 42 of the NDPS Act would be a matter of trial.

8. Learned counsel has referred to the decision of a Coordinate Bench of this Court in CRM-M-54123-2021, in case titled as Sandeep vs. State of Haryana, decided on 10.01.2022, involving recovery of 17 quintals, 12 kilograms and 760 grams of ganja, i.e. commercial quantity being 20 kilograms and above. Relevant extract of the aforementioned decision is reproduced as under:-

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”**.

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 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 under 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 has been in custody since 25.05.2021 and all the abovesaid factors are sufficient to entitle the petitioner to the concession 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 ordered 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.

xx xx xx ”

9. Accordingly, in view of the fact that the petitioner has been in custody since 23.10.2020, challan has been filed on 15.03.2021, charges have been framed and out of 20 prosecution witnesses, none has been examined till date, co-accused against whom identical allegations are there, has been released on bail vide order Annexure P/8 dated 18.11.2021, recovery is of 300 grams of heroin, marginally higher than the commercial quantity i.e. 250 grams and above, the other cases in which the petitioner is involved, relate to small / non-commercial quantity and the petitioner is on bail in the said cases, the petitioner has a one and a half year old son, who requires treatment and surgery having been born with one kidney, as also in view of the decision of the Coordinate Bench in CRM-M-54123-2021, in case titled as Sandeep vs. State of Haryana, decided on 10.01.2022, and the petitioner having made out arguable points, 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 hamper 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 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

07.04.2022
rajesh

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