

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(212)

CRM-M-176-2022

Date of decision: - 11.01.2022

Sushil Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. H.S. Brar, Senior Advocate,
with Mr. Sumeetpal Singh Sidhu, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is the second petition under Section 439 of Cr.P.C. for grant of regular bail in FIR No.227 dated 19.10.2020, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'NDPS Act') (Section 29 of the NDPS Act added later on), registered at Police Station Sadar Patti, District Tarn Taran.

The case of the prosecution is that the recovery of 1250 intoxicant tablets was made from one Balwant Singh and the said Balwant Singh has named the present petitioner in his disclosure statement, on the basis of which, the petitioner has been arrested in the present case and has

been in custody since 20.10.2020.

Learned Senior counsel for the petitioner has submitted that the petitioner has solely been implicated on the basis of the disclosure statement made by co-accused Balwant Singh and no recovery has been effected from the present petitioner and in fact, there is no incriminating evidence against the petitioner other than the said disclosure statement. Learned Senior counsel for the petitioner has relied upon the upon the judgment passed in ***CRM-M-12051-2020***, by a Co-ordinate Bench of this Court dated 17.06.2020 titled as “***Mewa Singh Vs. State of Punjab***” and the judgment passed in ***CRM-M-12997-2020 titled as “Daljit Singh Vs. State of Haryana”***, to contend that merely on the basis of the disclosure statement, the petitioner cannot be denied the benefit of regular bail. It is further submitted that in fact, the petitioner has been running a retail chemist shop under the name of M/s Arora Medical Store at Amritsar road, for which he has a valid licence, valid up to 31.12.2022 and a copy of the said licence has been annexed as Annexure P-2 with the petition. It is argued that in fact, the petitioner has got an FIR No.182 dated 18.12.2014 registered against one ASI Baljinder Singh under Sections 7 and 13(2) of the PC Act and since the said time the petitioner has been got involved in five false cases so as to pressurize the petitioner to compromise the matter with the said ASI Baljinder Singh. It is submitted that in FIR No.82/2017 registered under Sections 22 and 25 of the NDPS Act, a Co-ordinate Bench of this Court has granted stay of investigation vide order dated 08.11.2017 and in FIR No.77 dated 03.08.2017 and FIR No.152 dated 03.08.2017, the petitioner has been discharged, whereas in

FIR No.13 dated 23.01.2020 and FIR No.53 dated 30.06.2020, the petitioner has been granted the benefit of anticipatory bail and regular bail, respectively. It is further submitted that in fact on 20.10.2020, the petitioner was forcibly picked up while going on the way to his house, by the police officials, who came in civil dress and forced the petitioner to compromise the matter with ASI Baljinder Singh and upon his refusal to do the same, his custody was handed over to the police officials of Police Station Patti, District Taran Taran. With respect to the same, the petitioner had made phone calls and sent messages to helpline No.181 and 7696181181, the copy of the screen shots of which, has been annexed as Annexure P-3. It is further submitted that the petitioner has been in custody since 20.10.2020 and out of the 13 witnesses, no witness has been examined as yet. Learned Senior counsel for the petitioner further submitted that although the petitioner had filed the first regular bail on 05.08.2021 and the same was withdrawn at that stage, but even after passing of the said order, 5 ½ months has elapsed and no witness has been examined and the trial is not likely to conclude in near future, moreso, in view of the third wave of the pandemic, which the country is facing. It is stated that the said circumstance would be a substantial subsequent circumstance so as to entitle the petitioner to file the present second regular bail.

Learned State counsel on the other hand has opposed the present application for regular bail and has submitted that as far the false implication of the petitioner is concerned, the same is incorrect, inasmuch as the present FIR has been registered at police Station Sadar Patti,

District Tarn Taran, whereas, other FIRs were with respect to District Moga, however, the fact that there is no other incriminating evidence against the petitioner other than the disclosure statement of the co-accused, has not been disputed.

Learned Senior counsel for the petitioner in rebuttal has submitted that district Moga is very close to the district Tarn Tarn.

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

It is not in dispute that the petitioner was not named in the FIR. The alleged recovery of 1250 intoxicant tablets has been effected from the co-accused Balwant Singh and petitioner was sought to be implicated solely on the basis of the supplementary/disclosure statement of the said Balwant Singh and there is no other incriminating evidence against the petitioner other than the said disclosure statement. No recovery has been made from the petitioner. The Co-ordinate Bench of this Court in ***Mewa Singh' case*** (supra) has held as under: -

“1. The petitioner has approached this Court seeking grant of anticipatory bail in a case registered against him vide FIR No.133 dated 24.11.2019 under Section 21 NDPS Act Police Station Lohian, District Jalandhar.

2. Reply way of affidavit of Mr. Piara Singh, PPS, Deputy Superintendent of Police, Sub-Division Shahkot, District Jalandhar (Rural) on behalf of the respondent-State has been filed, which is taken on record.

3. The allegations in nut-shell are that Bachittar Singh was found in possession of 1.7 Kgs. 'Heroin'. During the course of interrogation, he made a disclosure statement nominating the petitioner as an accused wherein he stated that the contraband in question had been supplied by the petitioner.

4. *Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and was never arrested at the spot and that the alleged disclosure statement is not worth credence.*

5. *Opposing the petition, learned State counsel has submitted that keeping in view the antecedents of the petitioner his complicity is clearly evident inasmuch as he stands involved in three other cases i.e. FIR No.43 dated 2.4.2016 under Sections 15, 21, 22 NDPS Act, Police Station Sultanpur Lodhi; FIR No.5 dated 5.1.2020 under Sections 307, 186, 332, 353, 224, 225, 427, 148, 149 IPC, Police Station Sultanpur Lodhi & FIR No.193 dated 193 dated 22.11.2019 under Sections 15, 21, 25, 29 NDPS Act, Police Station Kartarpur.*

6. *I have considered rival submissions addressed before this Court.*

7. *It is not disputed that the petitioner was never apprehended at the spot and that the only evidence against him is in the shape of disclosure statement, the admissibility and veracity of which would be tested during the course of trial. As regards the other three cases which are stated to be pending against the petitioner, the learned counsel for the petitioner has submitted that even in the said cases he has been falsely implicated and was never arrested at the spot and has been granted anticipatory bail in all three cases.*

8. *Having regard to the facts and circumstances of the case and that it is a case where the petitioner has been nominated solely on the basis of disclosure statement, the petition is accepted and it is ordered that the petitioner in the event of his arrest shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.*

9. *It is however clarified that in case the petitioner does not join investigation, it shall be open to the investigating agency/prosecution to move for cancellation of his bail."*

The relevant portion of ***Daljit Singh's*** (*supra*) judgment is

reproduced hereinbelow:-

“Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.188 dated 08.04.2020 registered under Sections 15, 18, 27A, 29 of NDPS Act, under Sections 140, 188, 216, 419, 420, 467, 468, 471, 474 IPC and under Section 6 of Official Secret Act at Police Station Pehowa, District Kurukshetra.

Petitioner has been implicated on the basis of disclosure statement of co-accused from whom 248 kgs of poppy husk, 1 Kg 500 grams of opium and 199 Kgs khas khas were recovered.

FIR was registered on the basis of secret information, but still name of petitioner did not figure in the ruqa of the police.

Notice of motion was issued on 27.05.2020 alongwith interim directions in favour of the petitioner to join the investigation.

Order dated 27.05.2020 is reproduced here as under:-

“On account of outbreak of covid-19 the instant matter is being taken up through video conferencing.

Instant petition has been filed under Section 438 Cr.PC for grant of anticipatory bail to the petitioner in FIR No.188 dated 8.4.2020 for the offences under Section 15,18,27-A,29 of NDPS Act, 1985 at Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner has inter alia contended that the petitioner is innocent and has been falsely implicated in the case only on the basis of disclosure statement of co-accused from whom recovery of 248 kgs of poppy husk, 1 kg 500 grams of opium and 199 kgs.of khas khas was recovered. It has been further contended that the factum of his false implication is further fortified from the fact that the recovery of the aforementioned narcotic contraband was effected on the basis of secret information and his name did not figure either in the ruka sent by the police nor in the FIR in question coupled with the fact that nothing was recovered from him. He is not even involved in any other case of similar nature.

Notice of motion for 10.7.2020.

On the asking of the Court, Mr. Saurabh Mohunta, DAG., Haryana accepts notice.

Meanwhile, petitioner is directed to join the investigation and appear before the investigating agency/Investigating Officer. On his appearance, he shall be released on interim bail to the satisfaction of arresting/investigating officer. The petitioner shall, join the investigation as and when call for and shall abide by the conditions specified under Section 438(2) Cr.P.C.

27.05.2020

(MANJARI NEHRU KAUL)

JUDGE

Thereafter, the case was adjourned for filing detailed reply on behalf of the State.

The stands of the State is that the petitioner was escorting the canter in which the contraband was present and he was assigned the duty of giving signal in case of presence of police on the way.

Learned State counsel relies upon call details, tower location of the petitioner and the co-accused and also relies upon bank statement showing deposit of amount in the account of coaccused. The material on which the learned State counsel relies upon is dependent upon the evidence to be led in that context at the relevant stage.

Petitioner has joined the investigation, but learned State counsel seeks custody of the petitioner on the aforesaid premise.

*Having heard learned counsel for the parties, I find that the petitioner having involved on the basis of disclosure statement of co-accused namely Balbir and Rajinder is hit by the ratio of **Tofan Singh vs State of Tamil Nadu, Criminal Appeal No.152 of 2013** wherein it has been observed that the officers who are invested with powers under Section 53 of NDPS Act are the police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made before the police officer would be hit by Section 25 of the Evidence Act. Statement under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act.*

In view of aforesaid position, it would be just and appropriate to confirm order dated 27.05.2020, without meaning anything on the merits of the case.

Ordered accordingly.

However, the petitioner shall keep on joining the investigation

as and when required to do so by the Investigating Officer and shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petition stands disposed of.”

The present petitioner is also stated to have a valid licence of retail chemist shop under the name of M/s Arora Medical Store at Amritsar road and is holding a valid licence up to 31.12.2022. The petitioner has been in custody since 20.10.2020 and the challan in the present case has already been presented and nothing is to be recovered from him. There are 13 witnesses and none have been examined and thus, the trial is not likely to conclude in near future. Although, the petitioner had filed the first bail petition, which was withdrawn at that stage on 05.08.2021, but a period of 5½ months has elapsed since the same and the custody of the petitioner is substantial and even in the interregnum period, no witness has been examined. The fact that the petitioner has been falsely implicated or not, on account of the earlier FIR No.182 dated 18.12.2014, registered by the petitioner against ASI Balwant Singh under Section 7 and 13(2) of the PC Act and as to whether he was picked up on 20.10.2020 on the way to his house, is a matter which would be adjudicated upon at the time of trial, however, the possibility of false implication, cannot be ruled out.

Learned Senior counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, 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***”.

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 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 is of the opinion that in the present case, there are several arguable points which have been raised by the learned Senior counsel for the petitioner and the petitioner has been in custody since 20.10.2020 and all the abovesaid factors are sufficient to entitle the petitioner for 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 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 application.

January 11, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes