

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

CRM-M-50533-2022 (O&M)

Date of decision: 24.11.2022

Harender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ajay Singh, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No. 440 dated 29.09.2020, registered under Sections 20(b)(ii)(C) of the NDPS Act, 1985 at Police Station Sector 10, District Gurugram.

Learned counsel for the petitioner submits that the petitioner is in judicial custody for the last 02 years, 01 month and 04 days and he is not involved in any other case.

Learned counsel for the petitioner further submits that as per allegations in the FIR, registered at the instance of ASI Mohinder Singh, it is stated that on receiving a secret information that three boys are bringing narcotic substance 'Ganja' and they will come to Gurugram from the side of Pataudi, a raiding party was prepared and information under Section 42 of the NDPS Act was sent. Thereafter, the Investigating Officer laid a barrier and noticed that a car bearing registration number HR-26-AM-2926 was

coming from the side of Pataudi. The said car was signalled to stop, however, the driver of the car started driving the car in reverse but due to heavy traffic, he could not do so and the police party apprehended him. On inquiry, the driver disclosed his name as 'Harender @ Kala', i.e. the present petitioner; the second boy sitting on the front seat disclosed his name as 'Bhupender' and the third boy, who was sitting on the rear seat, disclosed his name as 'Rakesh @ Ganja'. Thereafter, by giving notice under Section 50 of the NDPS Act and in the present of a Gazetted Officer, two plastic bags and one plastic polythene were recovered from the rear seat of the car and on checking the same, total 39 kgs. of Ganja was recovered.

Learned counsel for the petitioner further submits that there are several discrepancies in the investigation, which will be a matter of trial, therefore, considering the fact that the petitioner is a first offender and he is in long judicial custody, he may be enlarged on regular bail.

Learned counsel for the petitioner relies upon the order dated 19.09.2022 passed by the Co-ordinate Bench of this Court, in **CRM-M-24006-2022**, titled as ***Sukhwinder Singh vs State of Punjab***, wherein the following observation has been made:-

“Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity has been effected, the Supreme Court as well as this Court have 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 vs. 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 vs. State of Punjab* reported as **2018 (4) RCR (Criminal) 84**, had considered the provision of Section 37 of the Act of 1985 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-M20177- 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 vs. 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 vs. 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 vs. 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 vs. State of Punjab and other*** connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the Act of 1985, 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**; reported as **(2021) 5 SCC 724** was also taken into account and the provisions of Section 37 of the Act of 1985 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.”

Learned State counsel, assisted by SI Satpal, has filed the

custody and has not disputed the factual position. As per custody certificate, the petitioner is in judicial custody for the last 02 years, 01 month and 04 days and he is not involved in any other case. Learned State counsel, on instructions, submits that out of total 30 prosecution witnesses, 09 witnesses have been examined so far.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the aforesaid facts and circumstances, the instant petition is allowed. 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/Illaqa Magistrate, concerned.

24.11.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No