

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

209

**CRM-M-54123-2021
Decided on : 10.01.2022**

Sandeep

... Petitioner

Versus

State of Haryana

... Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL
(Through Video Conferencing)**

PRESENT: Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana

VIKAS BAHL, J. (Oral)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.72 dated 18.05.2021 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”), Section 25 of the Arms Act, 1959 and Sections 395, 427, 216 and 34 of the Indian Penal Code, 1860 at Police Station Satnali, District Mahendergarh (District Narnaul).

Brief case of the prosecution is that secret information had been received to the effect that one Canter had been parked near Village Barda and since, there was suspicion that there were some intoxicant substances in the same, and finding the said information to be credible, a police team was formed to conduct the raid. Efforts were

made to join witnesses from the public but people showed their inability to do so and when the police party reached near the Canter, no person was found present near it and thereafter, a notice under Section 42 of the Act of 1985 was prepared and was forwarded to the Duty Magistrate. The Duty Magistrate reached the spot and in his presence, the search of the Canter was conducted. During the search, 17 quintals 12 kg and 760 grams of huge quantity of *ganja* was recovered from the said Canter. During the search of cabin of the Canter, one Driving Licence issued in the name of Ravi Kumar son of Om Parkash and one Aadhaar Card also in the name of Ravi Kumar, were recovered and the FIR was registered against unidentified persons. Thereafter, co-accused Ajit, Rohit and Kuldeep were arrested. The present petitioner was also arrested on 23.05.2021.

Learned counsel for the petitioner has further relied upon the order dated 15.11.2021 passed in CRM-M-46920-2021 titled as “Sukhwant Singh Vs. State of Haryana” vide which the co-accused Sukhwant Singh has been granted regular bail and further reliance has been placed upon the order dated 07.12.2021 passed in CRM-M-50518-2021 titled as Naveen Vs. State of Haryana and has submitted that the case of the present petitioner if not better is at parity with the said persons. It is submitted that the petitioner is not involved in any other case and he is only an employee of Ajit at the liquor vend of Ajit and the petitioner has been in custody since 23.05.2021 and the challan in the present case has been presented and there are as many

as 28 witnesses out of which only one has been examined and thus, the conclusion of trial is likely to take long time, moreso, in view of the COVID-19 pandemic.

Learned counsel for the petitioner has argued that the petitioner was not named in the FIR and he has nothing to do with the said occurrence inasmuch as he is neither the owner of the Canter nor is alleged to be the driver of the Canter. It is further submitted that no recovery has been effected from the petitioner nor the petitioner can be stated to be in conscious possession of any narcotic substances much less, the narcotic substance that has been allegedly recovered. It is further argued that as per the disclosure statement dated 24.05.2021 (Annexure P-2) of the petitioner, it is clear that the petitioner was not even aware as to what was there in the Canter and it is submitted that from the same, it is apparent that the petitioner is neither the person who had purchased *ganja* nor the person to whom the said *ganja* was to be supplied. It has been argued that in the disclosure statement, it has been stated that one Parmod, who lives in the house constructed near the underpass of village Nawan, had called the petitioner on mobile phone to inform him that one Canter was parked outside his house and two persons after leaving it there had run towards the railway station and that when they came back, they had been stopped by said Parmod and other persons on the suspicion that some liquor was there in the Canter and that the petitioner should also come to the spot, then the petitioner on his TVS

motorcycle went to the house of Parmod and saw that the said persons were arguing with each other, when one person had stated that there was liquor in the said Canter and requested for its release, failing which, he would consume poison. The petitioner then left them arguing and went on his motorcycle to the house of Ajit who had taken the liquor vends of village Nawan on contract and brought Ajit on the spot and thereafter, more people came who were known to the persons in the canter and the petitioner took the mobile phone of a person who had come there and the said persons had taken the Canter from near the underpass towards Digrota village and thereafter, Ajit called and asked for one pick up vehicle and the officials who were working on his liquor vends and then the said Ajit and the petitioner chased the Canter of the motorcycle and was joined by Rohit who was driving the pick up and all the other boys were with him in the same and hit the Canter with the said pick up vehicle and thereafter, after removing the tarpaulin of the Canter, all the persons checked the goods and in the bags *ganja* had been found and then they put some bags of *ganja* in the pick up vehicle and the counting of the same was done by Ajit and thereafter, Ajit and the petitioner went to a secluded place and the said Ajit sat with Shri Chand and Sunder in the Bolero Car and came to village Nawan whereas the petitioner went to his house and then the petitioner talked to Ajit and Ajit told the petitioner that after selling the same, he would give the petitioner his share. It is submitted that the said statement is the best case against the petitioner and although, there

is no connecting link with respect to the same but even if taken on its face value, then also, it is apparent that the petitioner was neither the person who had supplied the said *ganja* nor is the person to whom it had to be supplied to and in fact, while the petitioner and the other co-accused, as per the disclosure statement, were chasing the canter, the impression was that it contained liquor. It is further argued that as per the disclosure statement of one Naveen, it is Kuldeep Singh and Lakhmi who had the knowledge that *Ganja* was coming from Orissa and it was Ravi Kumar who was driving the said Canter and the said *ganja* had been stated to have been purchased from the State of Orissa by Lakhmi and Kuldeep Singh. It is further submitted that there is no allegation against the petitioner that he was in conscious possession of the said *ganja* nor any recovery of *ganja* has been effected from him and thus, reliance has been placed upon an order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled *Mewa Singh Vs. State of Punjab*, and an order of another Coordinate Bench dated 16.07.2021 passed in CRM-M-12997-2020 titled as *Daljit Singh Vs. State of Haryana* to contend that in such like cases if a person has been proceeded against only on the basis of disclosure statement and no recovery has been effected from the petitioner, then he should be granted the benefit of bail. It is also submitted that the petitioner is not involved in any other case.

Learned counsel for the petitioner has further relied upon

the order dated 15.11.2021 passed in CRM-M46920-2021 titled as “Sukhwant Singh Vs. State of Haryana” vide which the co-accused Sukhwant Singh has been granted regular bail and further reliance has been placed upon the order dated 07.12.2021 passed in CRM-M-50518-2021 titled as Naveen Vs. State of Haryana and has submitted that the case of the present petitioner if not better, is at parity with the said persons. It is submitted that the petitioner is not involved in any other case and he is only an employee of Ajit, at the liquor vend of Ajit and the petitioner has been in custody since 23.05.2021 and the challan in the present case has been presented and there are as many as 28 witnesses out of which, only one has been examined and thus, the conclusion of trial is likely to take long time, moreso, in view of the COVID-19 pandemic.

Learned counsel for the petitioner, in order to overcome the bar under Section 37 of the NDPS Act, has relied upon several judgments. The said judgments have been collated hereinbelow:

- i) Judgment of the Hon’ble Supreme Court in Criminal Appeal No.965 of 2021 titled as Dheeren Kumar Jaina v. Union of India.
- ii) Judgment of a Co-ordinate Bench titled as Ankush Kumar @ Sonu v. State of Punjab reported as 2018 (4) RCR (Criminal) 84; which was further challenged in the Hon’ble Supreme Court vide SLP (Criminal) Diary No.42609 of 2018 and the same was upheld.
- iii) Judgment of a Co-ordinate Bench in CRM-M-20177-2020 titled as Narcotic Control Bureau v. Vipin Sood and another and the same 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.

iv) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.668 of 2020 titled as “**Amit Singh @ Moni v. Himachal Pradesh.**”

v) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and another.**

vi) Judgment of a Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as “**Ajay Kumar @ Nannu v. State of Punjab**”.

Further, reliance has also been placed upon the judgment of a Division Bench of this Court in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, **Harpal Singh v. National Investigating Agency and another,** dated 31.08.2021, wherein the Division Bench was pleased to grant suspension of sentence in a case where the recovery was of commercial quantity. It has been argued that in the said Division Bench judgment, it had been noticed that the grounds for regular bail stand on better footing than for suspension of sentence, which is after conviction.

Notice of motion.

On advance notice, Mr. Manish Dadwal, AAG, Haryana, appears and accepts notice on behalf of the State and stated that he is fully prepared to argue the matter and assist this court. He has opposed the present petition for grant of regular bail to the petitioner and has submitted that the case of the petitioner is worse than the case of Ravi inasmuch as said Ravi was not present at the spot whereas, the

present petitioner was admittedly present at the spot. It is further submitted that it is apparent from the disclosure statement of the petitioner that he alongwith others have committed a crime and even after he had come to know that there was *ganja* in the Canter, still, he alongwith other persons had taken 6 quintals of *ganja* which have been recovered from co-accused Ajit. It is further submitted that there were quarrels between petitioner, Ajit and Parmod and recovery of the mobile phone used for the same had been made from the petitioner. It is however not disputed that no recovery of *ganja* has been made from the petitioner and that there is no other case against the petitioner. Learned State counsel has further submitted that the case of Sukhwant Singh and Naveen is not on parity with that of the present petitioner inasmuch as the said Sukhwant Singh was although present at the spot but was there only to give safe passage whereas Naveen was not even sitting in the Canter in question.

Learned counsel for the petitioner, in rebuttal, has submitted that even the present petitioner was not sitting in the said Canter as is sought to be highlighted in the case of Naveen.

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

It is not in dispute that the petitioner was not named in the FIR and even the documents recovered from the Canter in question, are with respect to co-accused Ravi Kumar. The Canter, is neither owned

nor was being driven by the petitioner nor it is the case of the prosecution that the petitioner was sitting/present in the Canter. The petitioner is neither stated to be the person who had purchased the *ganja* from the State of Orissa nor the person who had sold the same.

As per the disclosure statement of the petitioner, the allegation against the petitioner was that one Parmod, in front of whose house the said Canter was parked, had called the present petitioner to come there and the petitioner and the said Parmod suspected that there was some liquor in the said Canter and thereafter, the petitioner had brought Ajit in whose liquor vends the petitioner works and after the said Ajit was brought to the spot, they followed the said Canter on a motorcycle and another pick up vehicle in which the petitioner was not sitting, was also called by Ajit and the said pick up vehicle hit the Canter and from the Canter, some *ganja* was recovered and kept in the pick up vehicle which was to the extent of 6 quintal and the said *ganja* had been recovered from Ajit. Thus, from the disclosure statement, it is apparent that the petitioner was not the person who had purchased the *ganja* or to whom it had to be sold to. The petitioner happened to be at the place of the incident on account of a call made by Parmod and it was per chance that they found *ganja* in the Canter. No recovery of *ganja* has been made from the petitioner. As per the case of the prosecution, it is Kuldeep Singh and Lakhmi who had the knowledge that *ganja* was coming from Orissa and it was Ravi whose documents had been found in the Canter and it was him, who was driving the

Canter and had left the same parked. The case of the petitioner cannot be stated to be worse than that of Ravi and rather, is on a better footing than that of Ravi inasmuch as Ravi was the person who was involved in the Canter being its driver, in which *ganja* was being taken whereas the present petitioner just happened to be there at the time of the incident by chance without having knowledge that there was *ganja* in the said Canter. The question as to whether, when the petitioner was not even sitting in the Canter in question and was neither the supplier nor the purchaser, the petitioner could be considered to be in the conscious possession of the contraband, is a moot point which has to be decided during the course of trial. It is not in dispute that the petitioner is not involved in any other case and there are as many as 28 witnesses out of which, only one has been examined as yet and thus, the conclusion of the trial is likely to take time, moreso in view of the COVID-19 pandemic. The case of the petitioner is also on a similar footing as that of Naveen, who has been granted regular bail vide order dated 07.12.2021 passed in CRM-M-50518-2021.

Learned 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 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. 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.

(VIKAS BAHL)
JUDGE

January 10th, 2022
Mehak

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No