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

**CRM-M No.865 of 2023(O&M)
Date of Decision: 01.09.2023**

Varinder Kumar @ Dhalla

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Sidharth Chawla, Advocate
for the petitioner.

Mr. Sanjeev Soni, Addl., A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner seeks grant of regular bail under Section 439 Cr.P.C in his second attempt in case bearing FIR No.127 dated 29.11.2019 under Section 18 of the NDPS Act registered at Police Station Ajitwal, District Moga.

[2]. As per allegations, the car possessed by the petitioner was searched by the police and one kit bag of blue colour was recovered from the driving seat. On being checked, Opium was found, which was wrapped in a polythene bag along with currency notes. On weighment, the contraband was found to be

3 kgs in weight and on counting the currency notes, the same were found to be 400 currency notes of 2000/- denomination. 160 currency notes of 500/- denomination were also recovered, thereby totalling Rs.8,80,000/- as drug money.

[3]. Learned Senior Counsel for the petitioner submits that the petitioner has been involved in number of cases due to political status of his mother. In all other cases, he has been acquitted or discharged or has undergone the requisite period of sentence.

[4]. Status report filed by way of affidavit of Manjit Singh, PPS, Deputy Superintendent of Police, Sub Division Nihal Singh Wala, District Moga would indicate that the petitioner was involved in following cases, in which conviction was recorded:-

1.	261 dated 24-09-2012	307, 452, 363, 366-A, 148, 149 IPC and 25, 27 Arms Act.	P.S. Kotwali Faridkot	One of the famous cases of District Faridkot named as Sharuti Kand-27-05-2013-Convicted
2.	136 dated:11-8-2010	382, 341, 323,148 IPC	P.S. Ajitwal	10-03-2017-Convicted

3.	76 dated:08-5-2015.	Sec 25 of Arms Act	P.S. City-I, Moga	13-09-2017- Convicted and sentenced to imprisonment for the period of detention already undergone by him.
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[5]. Learned Senior Counsel for the petitioner further submits that in two cases, the sentence of the petitioner has been suspended and in FIR No.76 dated 08.05.2015, the petitioner has already undergone the requisite period of sentence.

[6]. In FIR No.279 dated 20.10.2019 under Sections 386, 120-B IPC, Police Station City Faridkot, the petitioner was granted regular bail by the High Court on 16.11.2020. He jumped the bail and was declared proclaimed offender vide order dated 07.12.2021. Thereafter, the bail was granted to the petitioner vide order dated 22.03.2023.

[7]. In the present case, the petitioner was granted interim bail by the High Court vide order dated 04.09.2020 in CRM-M No.8447 of 2020 and thereafter, interim bail was extended vide order dated 14.10.2020. On 24.11.2020, the petitioner withdrew the said petition and order was passed, thereby dismissing the

petition as withdrawn. The proclamation was executed and only on 29.11.2022, the petitioner surrendered before the trial Court and since then, he is in custody.

[8]. With reference to other cases shown in the tabulated form from Sr. No.1 to 9, the petitioner has submitted the status of those cases as under:-

Sr. No.	FIR No./Dated/Police Station	Offence u/s(s).	Status
1.	41/17.03.2010 P.S. City Moga	365, 324, 323, 506, 148,149 IPC	Acquitted vide judgment dt 09.03.2015 passed by the CJM, Moga
2	148/08.08.2011	364, 342, 120-B of IPC	Acquitted vide judgment dt. 30.4.2018 passed by the Addl. Sessions Judge, Moga
3.	347/02.11.2013 P.S. Sangrur	52 Prisoner's Act,1894	Discharged
4.	75/07.05.2015 P.S. City Moga	22, ND&PS Act	Acquitted vide judgment dated 11.4.2018 passed by the Sepcial Court, Moga
5.	203/04.11.2016 P.S. City Moga	22, ND&PS Act	Acquitted vide judgment dated 1.12.2017 passed by the Special Court Moga.

6.	167/24.09.2010 P.S. City Moga	336, 427, 34 IPC & 25, 27 Arms Act	On bail vide order dated 10.03.2023 passed by the Sessions Judge, Moga
7.	96/27.05.2014 P.S.City Moga	18, 24 NDPS Act	On bail vide order dated 22.01.2015 passed by the Additional Sessions Judge, Moga
8.	98/10.08.2012 P.S. Sadar Kotkapura	382, 506 IPC	On bail
9.	112/15.05.2018 P.S. City Faridkot	52-A, 42 Prisons Act, 1894	Discharged vide order dated 18.01.2020 passed by the JMJC, Faridkot

[9]. In the aforesaid cases, the petitioner has either been acquitted, discharged or granted bail.

[10]. Perusal of the custody certificate would also indicate that FIR No.23 was also registered on 13.04.2023 under Sections 21, 29, 61, 85 NDPS Act at Police Station Baghapurana i.e. the date on which, the status report is shown to have been prepared by way of affidavit of Manjit Singh.

[11]. There is no reference of aforesaid FIR in the status report. The custody of the petitioner in the said case is shown from 23.04.2023 till date.

[12]. Learned Senior Counsel for the petitioner submits that lodging of the aforesaid FIR is also on account of alleged antecedents of the petitioner, in which he was subjected to numerous cases. The petitioner seeks grant of regular bail on the basis of long custody, *de hors* the quantity allegedly recovered from the petitioner.

[13]. Learned Senior Counsel for the petitioner refers to **CRM-M No.24006 of 2022** titled **Sukhwinder Singh Vs. State of Punjab** decided on 19.09.2022 and **CRM-M No.9317 of 2022** titled **Chunni Ram @ Sandeep Vs. State of Haryana** decided on 22.11.2022, **Special Leave to Appeal (Crl) No.4173 of 2022** titled **'Shariful Islam @ Sarif vs The State of West Bengal'** decided on 04.08.2022, **Special Leave to Appeal (Crl) No.5530 of 2022** titled **'Mohammad Salman Hanif Shaikh vs The State of Gujarat'** decided on 22.08.2022 and **Criminal Appeal No.245 of 2020** titled **'Chitta Biswas @ Subhas vs The State of West Bengal'** decided on 07.02.2020, wherein concession of regular bail was granted on the basis of custody of about 01 year and 07 months approximately.

[14]. In **Sukhwinder Singh's case (supra)**, following observations were made by the Co-ordinate Bench while considering the regular bail of the accused:-

“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-M-20177-2020, a Coordinate 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.”

[15]. *Per contra*, learned State counsel opposed the bail on the ground that the quantity recovered from the petitioner is commercial in nature and the petitioner is not entitled for grant of bail. The vehicle in question was also owned and possessed by the petitioner. Learned State counsel on instructions from ASI Sandeep Kumar has admitted that no prosecution witness has been examined so far.

[16]. In view of acquittals/discharged earned by the petitioner in number of cases and without meaning anything on merits of the case, I deem it appropriate to grant regular bail to the petitioner, particularly in view of the period already undergone by the petitioner and the stage of the trial, where no prosecution witness has been examined so far.

[17]. In view of above, this petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate. No opinion is being expressed regarding lodging of FIR No.23 dated 13.04.2023. The petitioner if so advised, may avail his legal remedy in accordance with law.

[18]. Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

01.09.2023

Prince

Whether speaking/reasoned Yes/No

Whether reportable Yes/No