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

**CRM-M No.2056 of 2023(O&M)
Date of Decision: 19.01.2023**

Parminder Singh @ Tinder

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.S. Dhaliwal Advocate and
Mr. K.P.S. Virk, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

The petitioner seeks grant of regular bail under Section 439 Cr.P.C in his second attempt in case bearing FIR No.200 dated 22.04.2020 registered under Sections 15 of the NDPS Act (Sections 61/85 of the NDPS Act added later on) at Police Station Barwala, District Hisar.

Earlier CRM-M No.19470 of 2020 was dismissed by this Court vide order dated 12.11.2020 on the ground of competence of Naib Tehsildar to act as a Gazetted Officer and the prayer was dismissed without opining anything on the merits

of the case.

The FIR was registered on the basis of secret information to the effect that two persons were coming in a truck with a consignment of poppy husk. Police acted promptly and a *naka* was installed and the truck in question was stopped. The truck driver tried to run away, but was apprehended by the police personnel. On being asked, the driver disclosed his name as Parminder Singh @ Tinder. Another person was sitting by his side and on being asked, he disclosed his name as Ravinder Singh @ Bagga. On the basis of option given to the accused in terms of Section 50 of the NDPS Act, Naib Tehsildar, Barwala was called at the spot to conduct search of both the persons. Four plastic bags each containing 26 kgs of poppy husk were allegedly recovered from the vehicle, of which, the petitioner was the driver.

Learned counsel for the petitioner submits that the petitioner is in custody since 22.04.2020 and has undergone incarceration of more than 2 years and 9 months as on date. The petitioner is not involved in any other NDPS case.

Learned counsel for the petitioner with reference to custody of the petitioner submits that the *de hors* the quantity allegedly recovered from the petitioner, the custody alone is sufficient to grant regular bail to the petitioner in view of **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. Learned counsel also relies upon orders passed by the Hon'ble Apex Court in 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 more than 01 year and 07 months approximately.

With reference to interlocutory orders on record, learned counsel for the petitioner further submits that as of now, 11 prosecution witnesses have been examined out of total 15 prosecution witnesses and the trial of the case will definitely take long time to conclude.

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 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.”*

Per contra, learned State counsel opposed the bail on the basis of recovery being commercial in nature. Learned State

counsel submits that only 4 prosecution witnesses are left to be examined and the next date before the trial Court is 07.02.2023. Learned State counsel could not dispute that the petitioner is in custody since 22.04.2020 and has undergone incarceration of more than 2 years and 9 months as of now. The petitioner is also not involved in any other NDPS case.

In view of long incarceration of the petitioner for the last more than 2 years and 9 months and in view of the fact that the petitioner is not involved in any other NDPS case, I deem it appropriate to enlarge the petitioner on regular bail without meaning anything on the merits of the case.

In view of above, petition is allowed. 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.

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

(RAJ MOHAN SINGH)
JUDGE

19.01.2023

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No