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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11164-2022 (O&M)
Date of Decision: 01.03.2023

HARJIT SINGH ALIAS GEETA

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Yajur Sharma, Advocate and
Ms. Manpreet Ghuman, Advocate
for the petitioner.

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

RAJ MOHAN SINGH, J.(Oral)

The petitioner seeks grant of regular bail in his 2nd attempt under Section 439 Cr.P.C in case bearing FIR No.31 dated 07.02.2020, registered under Sections 22, 29, 61 and 85 of the NDPS Act at Police Station Lehra, District Sangrur.

The FIR was registered on the basis of secret information. The allegations are that when the police party was on patrolling and checking of suspicious persons, an information was received by ASI Gian Singh that the petitioner used to supply intoxicant tablets in the villages by bringing the same from Haryana and co-accused Asin had gone to take intoxicant

tablets from him. After registration of the FIR, next Inquiry Officer ASI Bikramjit Singh reached at the spot along with police party and apprehended Asin son of Suraj Khan by installing a Naka at T-point of the village. 500 intoxicant tablets marka Clovidol 100 SR and 1200 strips of Alprazolam IP 0.5 mg total 1700 intoxicant tablets were recovered.

The arrest of the petitioner was pending on the first date i.e. 07.02.2020. Thereafter on 08.02.2020, a secret information was received by the Station House Officer separately in respect of the petitioner that he was standing at small gate of abandoned sheller at matted road going from village Fatehgarh to village Hariau and the petitioner was having one white colour polythene bag and was waiting for someone. On the basis of the said secret information, a raid was conducted by the Police and the petitioner was found standing with a bag in his hand. On seeing the police party, the petitioner got puzzled and threw his polythene bag and tried to run away swiftly. He was apprehended and on being asked disclosed his name as Harjit Singh. The polythene bag thrown by the petitioner was lying open and the strips of intoxicant tablets were seen. On being counted the same were found to be 150 strips of intoxicant tablets marka Clovidol 100 SR and every strip was having written Tramadol Hydrochloride tablets 100 mg

with batch number. Total 1500 intoxicant tablets were recovered.

Learned counsel for the petitioner submits that in the present case two secret informations were received by the Police. The petitioner was apprehended in respect of second information for that no compliance was made by the Police in terms of Section 42 and 50 of the NDPS Act. The petitioner is in custody since 08.02.2020 and as of now he has undergone incarceration of 3 years and 21 days.

Learned counsel for the petitioner on the basis of long custody of the petitioner submits that case of the petitioner can be considered for 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.

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.”

Per contra, learned State counsel opposed the bail on the ground that the recovery effected from the petitioner is of commercial nature, however as of now it cannot be submitted whether the compliance in respect of second secret information was meticulously met or not. Out of 15 prosecution witnesses, 1 prosecution witness has been examined and the next date

before the trial Court is 14.03.2023.

Admittedly, the petitioner is in custody since 08.02.2020. Only one prosecution witness has been examined so far out of 15 witnesses. Trial of the case in any case may take sometime in its culmination.

At this stage without advertng to the merits of the case, keeping in view the custody of the petitioner and stage of the trial, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. The petitioner is ordered to be released on 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.

March 01, 2023	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No