

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.12669 of 2023

Date of Decision: 12.04.2023

SANDEEP KUMAR @ SONU

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Navkiran Singh, Advocate
for the petitioner.

Mr. Tapan Kumar Yadav, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

The petitioner seeks grant of regular bail under Section 439 Cr.P.C in his third attempt in case bearing FIR No.350 dated 28.04.2021 under Sections 20 and 25 of the NDPS Act registered at Police Station City Karnal, District Karnal.

CRM-M No.41765 of 2021 for grant of interim bail was dismissed on the premise that the present FIR came to be registered when the petitioner was on parole in the earlier case in which he was undergoing sentence under the NDPS Act. Thereafter CRM-M No.37390 of 2022 was filed for grant of interim bail in view of death of mother of the petitioner on

14.08.2022. The prayer was accepted vide order dated 25.08.2022 and the petitioner was allowed to attend kriya ceremony of his mother on 26.08.2022 at 9.00 am and was directed to be brought back after attending the necessary ceremony. Learned counsel for the petitioner submits that in view of the aforesaid facts, the present petition is the first petition for grant of regular bail.

As per allegations, the FIR was registered on the basis of secret information. A raid was conducted and the petitioner was caught on a scooty when he was carrying a bag in his right hand. 1 kg 715 grams of charas was allegedly recovered from a black polythene bag carried by the petitioner.

Learned counsel for the petitioner further submits that mandatory provisions under the NDPS Act have not been complied with in the light of stringent provisions containing stringent punishments. The petitioner is in custody for the last 1 year 11 months and 15 days. In FIR No.251 dated 26.08.2002 registered under Sections 392, 394, 34 IPC and under Section 25 of the Arms Act at Police Station Civil Lines Karnal, the petitioner has already completed the rigorous imprisonment of 7 years. In second case under Section 20 of the NDPS Act i.e. FIR No.19 dated 24.02.2010, the petitioner was convicted

and is on regular bail granted by the Hon'ble Apex Court.

Learned counsel for the petitioner submits that the petitioner is on bail in other cases and involvement of the petitioner in other cases would not be taken to be a ground for discarding bail in the present case in the light of observations made in ***Criminal Appeal No.153 of 2020 titled Prabhakar Tewari vs. State of UP and another*** decided on 24.01.2020.

Learned counsel further submits that *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.

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."

Learned State counsel however opposes the bail on the ground that huge recovery has been effected from the petitioner. Learned State counsel on instructions from ASI Lachhman submits that out of total 10 prosecution witnesses, 2 have been examined and now 24.04.2023 is the date fixed for remaining prosecution evidence.

At this stage without meaning anything on merits of the case and 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. 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.

12.04.2023.
P.Bhatt

(RAJ MOHAN SINGH)
JUDGE

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