

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-17258-2023

Date of decision : 19.04.2023

Sukhchain Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHLPresent: Mr.Shekhar Kumar, Advocate
for the petitioner.

Mr.Rohit Ahuja, DAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This is the third petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.48 dated 24.06.2021 registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Bhadaur.

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 24.06.2021 and there are 12 witnesses, out of which, 10 witnesses have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that co-accused Buta Singh has been granted the concession of regular bail by a coordinate Bench of this Court vide order dated 20.03.2023 passed in CRM-M-45795-2021. It is stated that the case of the petitioner is on a higher footing than that of said Buta Singh inasmuch as the shop from which the alleged recovery has been effected, is owned by Buta Singh whereas the petitioner is not the owner of the said shop. It is

more than said Buta Singh inasmuch as Buta Singh as well as the petitioner were arrested on 24.06.2021 and Buta Singh was granted the concession of regular bail whereas the petitioner is still in custody. It is submitted that on the ground of parity alone, the petitioner deserves the concession of regular bail and for the said purpose, he has relied upon a judgment of a coordinate Bench of this Court passed in ***“Mehtab Singh @ Mehtaba vs. State of Punjab”*** reported as ***2000(2) R.C.R. (Criminal) 228***. It is further submitted that arguable points have been noted in the case of Buta Singh by the coordinate Bench.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery in the present case effected from the petitioner as well as from Buta Singh in the shop of Buta Singh is of commercial quantity and thus, the bar under Section 37 of the Act would apply. However, other facts have not been disputed.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. The petitioner is in custody since 24.06.2021 and there are 12 witnesses and out of which, 10 witnesses are yet to be examined and thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case. Buta Singh, co-accused of the petitioner, has been granted the concession of regular bail by a coordinate Bench of this Court vide order dated 20.03.2023 passed in CRM-M-45795-2021. The relevant portion of the said order is reproduced hereinbelow:-

“Learned counsel for the petitioner contends that the petitioner is in custody since 24.06.2021. He submits that petitioner has been falsely implicated in the present case and at the time of arrest of the petitioner no independent witness has been joined, even though the

place where recovery is shown was a busy place. He further submits that nothing was recovered as alleged in the FIR because the case was registered at the secret information and the police has not complied with the provisions of Section 42 of NDPS Act and no information has been sent to the higher officers before conducting the raid. It is also submitted that the challan stands presented and the charges have been framed and there are no other antecedents and that the conclusion of trial will take sufficient time, therefore, the petitioner be enlarged on bail.

Custody certificate has been filed by the respondent-State, which is taken on record. Even though learned counsel appearing on behalf of respondentState, on instructions from the ASI Amarjit Singh, Investigating Officer, opposes the grant of regular bail to the petitioner, while submitting that the offence alleged against the petitioner is serious in nature, however, does not dispute the fact that challan stands presented on 11.11.2021 and the charges have been framed on 07.12.2021. Only two witnesses have been examined out of total 12 prosecution witnesses and the case is pending before the trial Court for prosecution evidence.

I have heard learned counsel for the parties.

Petitioner is in incarceration since 24.06.2021. It is not a case made out by the respondent-State that in case concession of bail is granted to the petitioner, he would hamper the course of free and fair trial. Further, since the recovery is joint from the petitioner and co-accused Sukhchain Singh and the challan stands presented, the charges have been framed, and there is no other case under NDPS pending against the petitioner, and also, the trial would take sufficient time, therefore, no useful purpose would be served in keeping the petitioner behind bars.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court concerned.

The petition is allowed.

20.03.2023

(DEEPAK MANCHANDA)
JUDGE”

6. Learned counsel for the petitioner has submitted that the said order has not been challenged and has thus, attained finality. The case of the petitioner if not on a better footing, is at least on an equivalent footing with the case of Buta Singh. Buta Singh was the owner of the shop from which

the alleged recovery has been effected and even the custody of the present petitioner is more than the custody of Buta Singh inasmuch as Buta Singh was arrested on the same date as the present petitioner i.e., on 24.06.2021 but was granted the concession of bail on 20.03.2023 whereas the petitioner is in custody till date. Coordinate Bench of this Court in **Mehtab Singh @ Mehtaba's** case (supra) has held as under:-

*“But the learned counsel for the petitioner, on the other hand, contends that the co-accused Amrik Singh who is similarly placed, has been granted bail by this Court by order dated 3.5.1999 and, therefore, the same concession can be extended to the petitioner also. In this connection, the learned counsel for the petitioner relied upon a decision of the Madhya Pradesh High Court in **Vishnu Ram Chandra Maheshwari v. State of M.P., 1999(3) All India Criminal Law Reporter 645** wherein it was held that generally rule of consistency requires that if a co-accused has been granted bail by the Court and the case against the applicant before the Court is similar and identical, he should be granted bail. That was also a case where the accused whose application for bail was earlier dismissed, but was subsequently granted bail on the ground of parity in view of the fact that the co-accused whose case is also similar and identical, had been granted bail. That decision squarely applies to the facts of the case in hand.”*

7. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on 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, 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/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.
8. However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.
9. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial 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

April 19, 2023
Davinder Kumar

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