

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

(240)

CRM-M-20304-2023 (O&M)

Date of decision: - 01.05.2023

Gurjant Singh**....Petitioner****Versus****State of Punjab****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Ms. Simran Grewal Randahwa, Advocate,
for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is the second petition filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No.66 dated 13.05.2020, registered under Sections 22/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Katcha Pakka, District Tarn Taran.

2. Learned counsel for the petitioner has submitted that the petitioner was arrested on 13.05.2020 and was granted the concession of interim bail by the Additional Sessions Judge, Tarn Taran, vide order dated 04.07.2020 and was thereafter again arrested on 03.10.2022 and since then, he has been in custody and out of total 12 prosecution witnesses, none has been examined, thus, the trial is likely to take time. It is further submitted that the petitioner had not misused the said

concession of interim bail granted by the trial Court. It is further submitted that the previous bail application of the petitioner was withdrawn on 19.12.2022 at that stage and even thereafter no witness has been examined and the trial has not made any progress and the petitioner is not involved in any other case. It is further submitted that even as per the case of the prosecution, the present case is a case of chance recovery and as per the FIR, it has been stated that when the police signaled the petitioner to stop, then, the motorcycle on which the petitioner was riding slipped and in this process white colour intoxicant tablets kept in the envelope on motorcycle handle got scattered, which were subsequently picked up by Sub Inspector Bachittar Singh and that no public witness was joined at that time. It is contended that in such a situation, it cannot be said that the petitioner was in conscious possession of the contraband and for the said argument, the petitioner has relied upon the decision of a Coordinate Bench of this Court in CRM-M-16150-2021 dated 19.07.2021 titled as '**Balwinder Singh Vs. State of Punjab**', and CRM-M-33733-2020 dated 15.03.2021 titled as '**Manjit Singh Vs. State of Punjab**', alongwith connected matters and also upon a judgment reported as **2019(4) RCR (Criminal) 714** titled as '**Ravi Kumar Vs. State of Punjab**'.

3. Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner had fallen from the motorcycle and the police party had also seen the intoxicant tablets, which had scattered from the envelope hanging on the handle of the motorcycle and thus, it cannot be said that the petitioner was not in conscious possession of the intoxicant

tablets. It is further submitted that recovery in the present case is of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply.

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

5. In **Balwinder Singh's** case (Supra), a Coordinate Bench of this Court has held as under:

“Briefly stated, case of the prosecution against the petitioner is that on 04.03.2019 police party headed by ASI Ravinder Singh on patrolling duty were coming to Tehang Octroi via Saiflabad. When they reached near Civil Hospital, Phillour they saw the petitioner coming on foot who on seeing the police party threw one heavy weight black coloured polythene bag and tried to run away. The police apprehended the petitioner and on search as per prescribed procedure recovered 55 intoxicant injections containing Buprenorphine 2 ml each and 55 injections containing Avil 10 ml each from the polythene bag.

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On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession commercial quantity of intoxicant injections. Rigors of Section 37(1)(b) are fully applicable to the case of the petitioner. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed. However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In CRM-M-13662-2020 titled as 'Niranjan Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474-2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRMM6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018 and CRM-M 16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020 where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the accused,

the case was considered to involve question as to whether the accused could be said to be in conscious possession thereof and the accused was granted regular bail.

In 'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020 where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by Hon'ble Supreme Court.

In the present case recovery of intoxicant injections was allegedly made from polythene bag allegedly thrown on the road side. The case involves debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the polythene bag lying on the road side. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37 (1)(b) of the NDPS Act stand satisfied by due implication. Further, the petitioner is in custody since 04.03.2019. Prosecution evidence is yet to be recorded. The trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19.

In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard."

A perusal of the above judgment would show that although,
in the said case, the recovery effected was of commercial quantity but,

since the recovery was effected after the same had been thrown on the ground, thus, it was observed that it was a debatable issue whether the petitioner could be stated to be in conscious possession of the narcotic substance or not. It was also observed that the rigors of Section 37(1) (B) of the NDPS Act stood satisfied by due implication.

6. Even in ***Manjit Singh's*** case (supra), a Coordinate Bench of this Court dealt with a case in which, the allegation was that the petitioner therein was holding a polythene bag and on seeing the police party, he threw the said polythene bag. It was observed that it was not possible to conclude that whether the recovery effected was made from the conscious possession of the petitioner therein or not. The said case was a case of commercial quantity.

7. Before advertng to the facts of the present case, it would be relevant to note the various judgments of the Hon'ble Supreme Court and High Court granting bail in cases involving commercial quantity.

8. In Criminal Appeal No.827 of 2021 titled as ***Mukarram Hussain v. State of Rajasthan and another***, the Hon'ble Apex Court vide judgment dated 16.8.2021 was also pleased to grant the concession of bail wherein the quantity of the contraband was commercial in nature.

9. A Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as ***Ajay Kumar @ Nannu v. State of Punjab and other*** connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, 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.”

10. 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 above-mentioned 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***; (2021) 5 SCC 724 was also taken into account and the provisions of Section 37 of NDPS Act 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.

11. In the present case, the petitioner was arrested on 13.05.2020 and was granted the concession of interim bail by the Additional Sessions Judge, Tarn Taran, vide order dated 04.07.2020 and was thereafter again arrested on 03.10.2022 and since then, he is stated to be in custody and out of total 12 prosecution witnesses, none has been examined, thus, the trial is likely to take time and the petitioner is stated to be not involved in any other case. It is not in dispute that the petitioner had not misused the said concession of interim bail granted by the trial Court. The question as to whether the recovery effected by the Sub Inspector after the tablets had fallen and were scattered on the road could be stated to be from the conscious possession of the petitioner or not, would be a matter of debate, which would be finally adjudicated during the course of the trial. Keeping in view the law laid down in the aforesaid judgments, moreso in the case of **Balwinder Singh's** case (supra), as well as in the case of **Manjit Singh's** case (supra), it is apparent that the said circumstances have a strong arguable point in favour of the petitioner and has been considered as a point to overcome the rigors of Section 37 of the NDPS Act. Moreover, this Court purposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

12. Keeping in view the abovesaid facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, 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 they are accused of, 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 from disclosing such facts to the Court or to any police officer or tamper with the evidence.
13. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail, before this Court.
14. However, nothing stated above shall be construed as an 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 application.
15. Pending application, if any, stands disposed of in view of the above.

May 01, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No