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

**CRM-M No.20930 of 2023
Date of Decision: 04.05.2023**

BALBIR SINGH @ BHEERA

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

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

Mr. Dushyant Saharan, Asstt. AG., 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.188 dated 08.04.2020 under Section 15 of the NDPS Act. Challan was filed later on for the offences under Sections 18, 27-A, 29 of the NDPS Act, Sections 140, 216, 419, 420, 467, 468, 471, 473 IPC and Section 6 of the Official Secrets Act registered at Police Station Pehowa, District Kurukshetra.

CRM-M No.24171 of 2021 was got dismissed as withdrawn vide order dated 02.07.2021 with a liberty to file fresh

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petition with better particulars.

As per allegations in the FIR, 248 kgs of poppy husk, 1 kg 500 grams of opium and 199 kgs of khas khas were recovered from a canter on the basis of secret information. Co-accused Daljit Singh has already been granted anticipatory bail vide order dated 16.07.2021 passed in CRM-M No.12997 of 2020. Similarly, Jaiditya Ahir has also been granted anticipatory bail vide order dated 19.01.2023 passed in CRM-M No.34955 of 2021. During the investigation, the petitioner is alleged to have suffered a disclosure statement, disclosing that he had purchased the alleged contraband from the aforesaid Jaiditya Ahir for a consideration of Rs.10 lakhs.

Learned counsel for the petitioner submits that *de hors* the quantity recovered, the regular bail of the petitioner can be considered on the basis of his total custody of 3 years and 17 days as on date in view of the fact that the petitioner was arrested on 08.04.2020, challan was filed on 24.09.2020, charges were framed against the petitioner and Harjinder Singh on 06.08.2022 and supplementary challan was filed against Daljit Singh @ Japan on 08.09.2021 and against Jaiditya Ahir on 08.02.2023. The charges have also been amended on 10.03.2023. Out of total 34 prosecution witnesses, only 2

witnesses have been examined so far and the trial of the case may take long time in its culmination.

With reference to the allegations, learned counsel for the petitioner submits that alleged recovery of 1 kg 500 grams of opium is non-commercial quantity, whether khas khas would fall under domain of NDPS Act would remain debatable.

Learned counsel for the petitioner further submits that at this stage the custody of the petitioner for the last more than 3 years and 17 days can be considered for grant of regular bail particularly in view of the fact that out of total 34 prosecution witnesses, only 2 witness have been examined so far.

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, regular bail of the petitioner can be considered *de hors* the quantity of poppy husk allegedly recovered from the petitioner.

Learned counsel also places reliance 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,***

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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

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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 on the basis of quantity recovered from the petitioner submits that the petitioner was driver of the canter which has been escorted by the co-accused Jaiditya Ahir from where huge quantity of contraband was recovered. Quantity recovered falls under commercial quantity and therefore the petitioner is not entitled for regular bail.

Having considered the submissions, I find that the petitioner is in custody for last more than 3 years and 17 days. Only two prosecution witnesses have been examined so far and trial of the case would take some time in its culmination.

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.

04.05.2023
P.Bhatt

(RAJ MOHAN SINGH)
JUDGE

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