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

CRM-M-21417-2023

Date of decision : 04.05.2023

Jeeshan @ Jishan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amjad Khan, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. A.G. Punjab

VIKAS BAHL, J. (ORAL)

1. This is a second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.239 dated 15.10.2021 registered under Section 22 of the NDPS Act, 1985, at Police Station City Rajpura, District Patiala.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 15.10.2021 and investigation is complete and challan has been presented and there are nine prosecution witnesses, out of which, seven witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. It is further submitted that the petitioner had previously filed a bail application which was dismissed as withdrawn on 14.12.2022 at that stage and even thereafter, sufficient time has lapsed and

the trial has not made much progress and thus, the same entitles the petitioner to file the present bail petition. It is contended that the petitioner is not involved in any other case and has submitted that there are arguable points involved in the present case including the point that as per the case of the prosecution, the present petitioner had thrown the bag in an agricultural field and from the said bag, drugs related bottles had scattered on the road and 48 intoxicants bottles of Chlorpheniramine-Maleate & Codeine Phosphate Syrup (Maxcoff) were recovered from the bag which had been thrown. It is further 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 on order passed in CRM-M-33733-2020 dated 15.03.2021 titled as '**Manjit Singh Vs. State of Punjab**', alongwith connected matters and also upon judgment reported as **2019(4) RCR (Criminal) 714** titled as '**Ravi Kumar Vs. State of Punjab**'. It is submitted that apparently FIRs are registered by crafting such a version by the prosecution in order to bypass the mandatory provisions of Section 50 of the NDPS Act.

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 it was in the presence of the police party that the petitioner had thrown the bag containing the bottles and thus, it cannot be said that the petitioner was not in conscious possession of the intoxicant substances. It is further submitted that recovery in the present case is of commercial quantity and

thus, bar under Section 37 of 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 also, the recovery was of commercial quantity but since the recovery of the polythene bag therein was after the same had been thrown, it was observed that it was a debatable issue as to whether the petitioner therein could be stated to be in conscious possession of the same. It was also observed that the rigors of Section 37(1) (B) of the NDPS Act stood satisfied vide 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 the recovery was made from the conscious possession of the

petitioner therein. The said case was also a case of commercial quantity.

7. Before advertng to the facts of the present case, it would relevant to note the various judgments of the Hon'ble Supreme Court and High Court granting bail in cases involving commercial quantity. In CRMM-20177- 2020, titled as ***Vipan Sood vs. State of Punjab***, 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 v. Vipan Sood and another”***.

8. 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 v. 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.

9. 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 bail wherein the quantity of the contraband was commercial in nature.

10. 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.”

11. Further, Hon’ble 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 Hon’ble 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 Hon’ble Division Bench judgment of this Court in ***Daler Singh v. State of Punjab***; reported as 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.

12. In the present case, the petitioner is in custody since 15.10.2021 and investigation is complete and challan has been presented and out of nine prosecution witnesses, seven witnesses are yet to be examined and thus, the conclusion of trial is likely to take time. The question as to whether the recovery of bottles which was effected, after the petitioner had allegedly thrown the same, could be stated to have been effected 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. However, keeping in view of 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 same is 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. 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.

13. The petitioner shall also abide by the following conditions:-

- a). The petitioner will not tamper with the evidence during the trial.

- b). The petitioner will not pressurize / intimidate the prosecution witness(s).
- c). The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- d). The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which they are suspected.
- e). 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.

14. 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.

15. 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.

04.05.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No