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

CRM-M-21794-2023

Date of decision : 05.05.2023

Sandeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rishabh Gupta, Advocate for the petitioner.

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

VIKAS BAHL, J. (ORAL)

1. This is the third petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.164 dated 21.10.2021 registered under Section 22 of the NDPS Act, 1985 at Police Station City-1 Mansa, District Mansa and the charges have been framed under Sections 22 and 27 of the NDPS Act by the Special Court, Mansa.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 21.10.2021 and investigation is complete and challan has been presented and there are 17 prosecution witnesses, out of which, none have been examined as yet and thus, the conclusion of trial is likely to take time. It is further submitted that the last bail application filed by the petitioner was withdrawn on 12.01.2023 with liberty to file a fresh

petition after the charges had been framed or after any substantial change in circumstance. It is contended that after passing of the said order, charges have been framed on 22.02.2023 under Sections 22 and 29 of the NDPS Act which were subsequently amended vide order dated 10.04.2023 and Section 29 of the NDPS Act was removed and Section 27 of the NDPS Act was added and thus, offences, for which the petitioner is being tried, are under Sections 22 and 27 of the NDPS Act. It is further contended that the petitioner is not involved in any other case and that in the present case, it is the case of the prosecution that the recovery from the present petitioner is of 600 tablets of TRAMWEL-100SR (Tramadol) and the intoxicant substance in the same is 230 grams which would fall under the category of non-commercial quantity as the commercial quantity for the same starts from 250 grams. It is argued that although, there is alleged recovery of intoxicant tablets from the other two co-accused but the said recovery cannot be clubbed with the recovery of the present petitioner as even as per the case of the prosecution, the petitioner and other accused were walking at the time of being apprehended and were not travelling in a car and were holding separate plastic bag in their respective hands from which the separate recoveries have been allegedly effected. It is further argued that no charge under Section 29 of the NDPS Act has been framed by the trial Court. Learned counsel for the petitioner has relied upon the judgment of a coordinate Bench of this Court passed in CRM-M-2349-2016 titled as **“Buta Singh @ Buti vs. State of Punjab” decided on 26.02.2016** in support of his argument, that in such a situation, recoveries so effected, cannot be clubbed together. Reliance has also been placed the judgment passed by the

Hon'ble Supreme Court in *Amarsingh Ramjibhai Barot Vs. State of Gujarat*, reported as 2005(7) SCC 550.

3. On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner was walking together along with two other co-accused and the recovery effected from all the accused together falls under the category of commercial quantity and thus, 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 the present case, the petitioner is in custody since 21.10.2021 and investigation is complete and challan has been presented and out of 17 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. The petitioner is not involved in any other case. The recovery which has been effected from the present petitioner is of 230 grams of tramadol would fall under the category of non-commercial quantity as the commercial quantity for the same starts from 250 grams. In *Buta Singh @ Buti's* case (supra), a coordinate Bench of this Court has observed that in a case, when separate recoveries have been effected from two persons, of two different quantities while walking, then both cannot be clubbed together. Relevant portion of the said judgment is reproduced hereinbelow:-

“Petitioner seeks benefit of regular bail pending trial in case FIR No.49 dated 26.08.2015, under Sections 21/61/85 of the NDPS Act, registered at Police Station Amir Khas, District

Ferozepur.

Perusal of the impugned order dated 30.10.2015 passed by learned Judge, Special Court, Ferozepur would reveal that the concession of bail has been declined to the petitioner on the ground that 310 grams of heroin was recovered from the conscious possession of present petitioner, Buta Singh @ Buti as also coaccused, Gurmail Singh and in the light of the same, falling within the scope of commercial quantity, the rigors of Section 37 of the NDPS Act would apply.

Having heard counsel for the parties, this Court is of the considered view that the petitioner is held entitled to the benefit of bail.

Perusal of the FIR would in itself reflect that the case of the prosecution is not that of a joint recovery. The alleged recovery effected from the co-accused, Gurmail Singh from the right pocket of his pyjama was of 255 grams of heroin. The alleged recovery from the conscious possession of the present petitioner is stated to be of 55 grams. As per prosecution version, separate sample parcels were prepared and even Form M-29 was prepared separately.

*The Hon'ble Apex Court in **Amarsingh Ramjibhai Barot Vs. State of Gujarat, 2005(7) SCC, 550** has observed that when two accused are found together carrying contraband, the quantity of contraband carried by both the accused is not be added to bring it within the meaning of commercial quantity.*

Concededly, the alleged recovery from the present petitioner is of 55 grams of heroin which would be construed as noncommercial. It has also been conceded that the petitioner is not involved in any other case under the NDPS Act.

For the reasons recorded above, the present petition is allowed. Petitioner be enlarged on bail subject to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate,

Ferozepur.

Disposed of.”

A perusal of abovesaid judgment would show that reliance has also been placed upon the judgment passed by Hon’ble the Supreme Court in ***Amarsingh Ramjibhai Barot’s case*** (Supra) by the Coordinate Bench of this Court.

6. In the present case, no charge under Section 29 of the NDPS Act has been framed and the question “as to whether the recovery from the present petitioner is to be clubbed with the recovery made from the other persons when all the said three persons were walking,” would be finally adjudicated at the time of trial but the said aspect raises a strong arguable point in favour of the petitioner entitling him to the concession of regular bail more so, by taking into consideration the custody of the petitioner as well as the fact that he is not involved in any other case. Moreover, this Court purposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

7. Keeping in view the abovesaid facts and circumstances and also in view of law laid down in abovesaid judgments, 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 concerned trial Court/Duty Magistrate, subject to him not being required in any other case.

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, or for commission of which he is 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/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

8. 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.

9. 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.

05.05.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No