

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34582-2022 (O&M)
Date of decision: 19.01.2023

Ramesh Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. L.S. Sekhon, Advocate
for the petitioner.

Ms. Rajni Gupta, Addl. AG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.40 dated 22.02.2021 under Section 22(c)/61/85 of NDPS Act, registered at Police Station Nathu Sarai Chopta, District Sirsa.

Learned counsel for the petitioner, at the very outset, relies upon the order dated 22.11.2022 passed in CRM-M-9317-2022, vide which co-accused Chunni Ram @ Sandeep has been granted the concession of regular bail. The operative part of the order reads as under: -

“Counsel for the petitioner has submitted that the new ground for filing this 2nd petition is that the petitioner is in custody for the last 01 year, 02 months and 07 days and no PW has been

examined so far and it will take some time in conclusion of the trial.

Counsel for the petitioner has further submitted that after availing the interim bail, the petitioner has surrendered back and in the intervening period, he has not misused the concession of bail.

Counsel for the petitioner has argued that in another FIR, which was registered on the same day, on the basis of the disclosure statement, the petitioner was granted the concession of regular bail vide order dated 28.09.2022 passed in CRM-M No.12891 of 2022.

Counsel for the petitioner has further contended that as per the allegations in the FIR, the petitioner was seen coming on a motorcycle and he was apprehended on the basis of suspicion that he is carrying a bag of intoxicant tablets on the handle of the motorcycle. Thereafter, the petitioner was searched before a Gazetted Officer and the recovery of 590 strips i.e. total 5900 ALPRAZOLAM tablets were recovered. It is also submitted that though, there are material discrepancies in the investigation, which will be taken up as a defence during the course of trial, however, considering the fact that the petitioner is in custody, for the last about 01 year and 02 months and till date, the trial has not started as no PW has been examined, the petitioner be granted the concession of bail.

*Counsel for the petitioner has relied upon the order dated 19.09.2022 passed by the Co-ordinate Bench of this Court, in CRM-M No.24006 of 2022, titled as “**Sukhwinder Singh vs State of Punjab**”, wherein the following observation has been made:-*

*“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**, 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 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.”

Counsel for the State has argued that the reply on behalf of the Deputy Superintendent of Police, Sirsa, is already on record in which the factum of grant of bail in another case is not disputed. It is also not disputed that the petitioner was nominated in another case on the same day in Police Station Sadar Fatehabad, on the basis of the disclosure statement of the co-accused, who were arrested in the said case.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 01

*year, 02 months and 07 days; the custodial interrogation of the petitioner is not required; no PW has been examined, so far and the conclusion of the trial will take some time and further in view of **Sukhwinder Singh**'s case (supra), this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate."*

Learned counsel has placed on record copy of the order dated 06.07.2020 passed by the High Court of Rajasthan, vide which the petitioner was granted the concession of regular bail in FIR No.176/2019 under Sections 8/21, 22 & 29 of NDPS Act, registered at Police Station Sahava, District Churu, as in the said case also, he was nominated on the basis of disclosure statement.

Learned counsel submits that the petitioner was in fact nominated on the basis of disclosure statement of co-accused Chunni Ram @ Sandeep and after his arrest, no narcotic substance was recovered from the petitioner. It is further submitted that the petitioner is in custody for the last 08 months and 22 days, though the charges are framed, but no prosecution witness is examined so far.

Learned State counsel has filed the custody certificate in the Court today and has not disputed the factual position, however, it is submitted that the petitioner is involved in two more FIRs under NDPS Act, out of which one FIR is registered in Rajasthan. Learned State counsel has place on record copy of the order dated

After hearing learned counsel for the parties, without commenting

anything on merits of the case and considering aforesaid facts and circumstances of the case and also long custody of the petitioner, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

19.01.2023
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No