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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-11277-2023 in/and
CRM-M No.50944 of 2022
Date of Decision: 28.03.2023

BUTA SINGH

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

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

Present: Mr. Brijesh Nandan, Advocate
for the petitioner.

Mr. Sanjeev Soni, Addl. A.G. Punjab.

RAJ MOHAN SINGH , J.(ORAL)

Petitioner seeks grant of regular bail in his 3rd attempt under Section 439 Cr.P.C in case bearing FIR No.68 dated 15.05.2020 registered under Sections 22 of the NDPS Act at Police Station Kacha Pakka, District Tarn Taran, Punjab.

Criminal Miscellaneous No.19293 of 2021 was dismissed-as-withdrawn on 23.11.2020 thereafter criminal miscellaneous No.13154 of 2021 was dismissed on 20.04.2022 by this Court in the absence of learned counsel for the petitioner on the ground that 1000 intoxicating tablets were recovered from the petitioner and on the basis of disclosure statement of

the petitioner co-accused Jagbir Singh was nominated.

As per allegations, the petitioner was apprehended by the police when the police party was on patrolling duty. Petitioner was apprehended on the basis of suspicious and the intoxicating tablets were recovered. As per status report filed by the police the petitioner is also involved in FIR No.463 dated 16.10.2020 under Sections 21, 22, 61, 85 of the NDPS Act and Sections 42, 52-A of the Prison Act, Police Station Islamabad. The trial of the aforesaid FIR is pending. The petitioner is also accused in FIR No.42 dated 30.01.2021 under Sections 42, 52-A of the Prison Act and the said case is also pending in the Court. Petitioner is also accused in FIR No.202 dated 02.06.2022 registered under Sections 22, 61, 85 of NDPS Act and Sections 42, 52-A of the Prison Act and Sections 25, 54, 59 of the Arms Act. The trial of the said case is also pending in the court of law. On the basis of aforesaid information of the petitioner, the State counsel submits that though the petitioner is in custody for the last more than 2 years 10 months as on 27.03.2023 but he is not entitled to bail.

Learned counsel for the petitioner on the basis of their long custody submits that de-hors the quantity allegedly recovered from the petitioner, the custody of the petitioner can be appreciated in order to grant bail to the petitioner at this stage 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.

Learned counsel also relies 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**, 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.”

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, both petition 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.

28.03.2023
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(RAJ MOHAN SINGH)
JUDGE

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