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

CRM-M-51726-2022
Date of decision : 09.03.2023

Ranjit Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Charanjit Singh Bahia, Advocate and
Mr. Vivek K. Singla, Advocate for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in FIR No.33 dated 28.05.2022 registered under Section 22 of the NDPS Act, 1985 (Section 29 of the NDPS Act, has been added later on) at Police Station Bhadaur, District Barnala.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 31.05.2022 and investigation is complete and challan has been presented and there are 11 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 It is further submitted that the last bail application filed by the petitioner was withdrawn on 29.08.2022 at that stage and even thereafter, no witness has been examined and no progress has been made in the trial. It

is contended that the petitioner was not named in the FIR and the alleged recovery of 984 loose white coloured tablets was effected from two co-accused namely, Gurwinder Singh and Khush Karan Singh. It is further contended that on the basis of disclosure statements made by the said two accused persons, the present petitioner is sought to be implicated and that, in the entire challan, there is no link evidence to link the present petitioner with the said recovery of 984 loose tablets having been effected from the abovesaid two co-accused other than the disclosure statements. It is argued that simply, on the basis of disclosure statements, without there being any link evidence between the petitioner and the co-accused from whom the said recovery is effected, the petitioner cannot be held liable for the recovery of 984 loose tablets. It is further argued that recovery of 200 loose tablets has been shown to be effected from the present petitioner vide a separate recovery and the said 200 tablets are alleged to have contained 82.09 grams of tramadol hydrochloride and thus, falls within the ambit of non-commercial quantity inasmuch as the commercial quantity for the same starts from 250 grams. It is also submitted that the petitioner is not involved in any other case. In support of his arguments, learned counsel for the petitioner has relied upon **order dated 30.11.2022** passed by the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) No.4729/2022** titled as **Abu Taher Mandal @ Sentu Vs. The State of West Bengal** as well as **order dated 14.09.2022** passed by a Coordinate Bench of this Court in **CRM-M-4814-2022** titled as **Kali Kaur Vs. State of Punjab.**

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 recovery effected in the present case, if taken on an aggregate, would fall within the ambit of commercial quantity and thus, the rigors of Section 37 of the NDPS Act 1985 would apply in the present case.

This Court has heard learned counsel for the parties and has perused the paper book.

A Coordinate Bench of this Court in ***Kali Kaur's case*** (Supra), was pleased to hold as under:-

“I have considered the submissions made by counsel for the parties.

Admittedly the petitioner was not named in the FIR. As per prosecution version 400 grams of Heroin was recovered from the possession of non-applicant Rani Kaur who was travelling in a car with non-applicant Dilbagh Singh, Rajni Bala @ Rosy and Jagsir Singh on 28.11.2021. There are also allegations that aforesaid Rani Kaur made disclosure against the present petitioner and accordingly the present petitioner was nominated as an accused and 10 grams of Heroin was recovered from her possession on 16.12.2021 and since then she is in custody in the present case. The State counsel has failed to show that the present petitioner was having any acquaintance with aforesaid Rani Kaur. The State counsel has admitted that there is no call detail record to connect the petitioner with recovery of 400 grams of Heroin from the possession of Rani Kaur.

It is a moot point as to how the petitioner is liable for recovery of 400 grams of Heroin, which is stated to have been effected from conscious possession of Rani Kaur.

As per prosecution version, only 10 grams of Heroin was recovered from the conscious possession of the petitioner, which comes under non-commercial quantity and thus embargo of Section 37 NDPS Act is not applicable to the

case of the petitioner.

Further the police has presented the challan after completion of investigation and charges have been framed, but it will take considerable time for the trial to conclude. As per the custody certificate furnished by the State counsel, the petitioner is already in custody for about 9 months and is recorded to be on bail in the another criminal cases which are being faced by her.

In view of the above, as it will take time for the trial to conclude, so no purpose is going to be served by keeping the accused behind the bars for any longer period.

Thus without commenting on the merits of the case, the petition is allowed and the petitioner is ordered to be released on bail subject to her furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

Sd/-(KARAMJIT SINGH)

14.09.2022

JUDGE”

A perusal of the above order would show that in the said case, although, recovery effected from the non-applicant was 400 grams of heroin, which falls under commercial category, and the petitioner therein had been nominated on the basis of the disclosure statement made by the said non-applicant Rani Kaur and thereafter, recovery effected from the petitioner therein was of 10 grams of heroin, which quantity falls under non-commercial category, the Coordinate Bench after considering that there was no record of call detail between the petitioner therein with co-accused Rani Kaur so as to connect her with the recovery of 400 grams of heroin, had granted bail to the petitioner therein.

The Hon'ble Supreme Court of India in ***Abu Taher Mandal @***

Sentu's case (Supra) was considering the bail application of the accused petitioner therein from whom recovery of 61 grams of heroin had been effected and who was implicated on the basis of the statement of the principle accused Mohammad Shamim, from whom, recovery of 786 grams of heroin had been effected. One of the factors which was considered by the Hon'ble Supreme Court was that the recovery effected from the said petitioner was not of commercial quantity although, in the said case, there were other factors including the factum of long custody undergone by the petitioner therein and the Hon'ble Supreme Court after considering these aforesaid factors, was pleased to grant bail to the petitioner therein.

In the present case, the petitioner is in custody since 31.05.2022 and investigation is complete and challan has been presented and out of 11 prosecution witnesses, none have been examined as yet and thus, the conclusion of trial is likely to take time. The petitioner is stated to be not involved in any other case. The recovery effected from the present petitioner is of 200 loose tablets and the same contains 82.09 grams of tramadol hydrochloride as is apparent from para 7 of the order dated 04.08.2022 passed by the Judge, Special Court, Barnala dismissing the bail application of the present petitioner and thus, the same would fall within the ambit of non-commercial quantity as the commercial quantity stipulated for the same starts from 250 grams. No material has been produced before this Court so as to show that there is any link between the petitioner and two co-accused namely Gurwinder Singh and Khush Karan Singh and to also show the involvement of the petitioner with respect to recovery of 984 loose tablets which has been effected from Gurwinder Singh and Khush Karan Singh other than the

disclosure statements made by the said two co-accused. The question as to whether the petitioner can be linked to the said recovery effected from the abovesaid Gurwinder Singh and Khush Karan Singh or not, would be a moot question, which would be determined during the course of the trial.

Keeping in view the abovesaid facts and circumstances and also the abovesaid orders passed by the Hon'ble Supreme Court and the Coordinate Bench of this Court and also keeping in view the custody undergone by the petitioner and the stage of the trial and the recovery effected in pursuance of the disclosure statement of the present petitioner, 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 trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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.

09.03.2023*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**