

CRM-M-54431 of 2022

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

CRM-M-54431 of 2022
Date of decision: 31.01.2023

Tarsem Singh

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. N.S. Sidhu, Advocate, for the petitioner.
Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

In compliance of order dated 30.11.2022, status report by way of affidavit of Sanjeev Goyal, Deputy Superintendent of Police, Sub-Division Mansa, District Mansa, has been filed on behalf of the respondent-State, which is taken on record.

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case FIR No.188 dated 22.06.2021 under Sections 22/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Mansa, District Mansa.

According to the prosecution, on 22.06.2021, co-accused Jagsir alias Logo and Charanjit Kaur alias Charno were apprehended by the police party and recovery of 200 tablets of Tridol containing salt tramadol hydrochloride was effected from Jagsir Singh and 190 tablets of Tridol containing tramadol hydrochloride salt were recovered from Charanjit Kaur, without any permit or licence. During the course of investigation, co-accused Charanjit Kaur in her disclosure statement named the petitioner as

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co-accused and accordingly, he was nominated as accused under Section 29 of the NDPS Act vide DDR No.39 dated 23.06.2021.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He is not named in the FIR. He has been nominated as an accused on the disclosure statement of co-accused Charanjit Kaur, which has no evidentiary value. He further contends that petitioner is in custody since 05.09.2022. He further submits that challan in the present case has been presented; charges have been framed; out of total 13 prosecution witnesses, only 02 witnesses have been examined as yet and next date of hearing before the trial Court is 26.02.2023. Co-accused of the petitioner, namely, Charanjeet Kaur @ Charno and Jagsir Singh alias Logo have been granted regular bail by a Co-ordinate Bench of this Court vide orders dated 16.12.2021 and 07.01.2022 passed in CRM-M-36965 of 2021 and CRM-M-53490 of 2021, respectively (Annexures P-3 & P-4). Learned counsel further contends that alleged separate recovery of the contraband has been effected from both the co-accused, which was a non-commercial quantity and recovery from both the co-accused could not be clubbed to make the total recovery that of commercial quantity. He relies on the judgment of this Court in ***Amit Dhanak Vs. State of Haryana CRM-M-33684-2020 Decided on 11.01.2021*** to contend that when there is separate recovery from each accused of non commercial quantity then the recovery from each accused cannot be clubbed together so as to disentitle all the accused to the grant of bail. Relevant para of the order dated 11.01.2021 is reproduced as under:-

“Considering the facts; that in the FIR specific recovery has been attributed to all the three accused of 16Kgs of Ganja Patti each; they are in custody since August, 2020; no recovery is to

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be made; the individual recovery is of non commercial quantity and conclusion of trial would take time, both the petitions are allowed. The petitioners are ordered to be released on bail subject to their furnishing surety/bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned. ”

A similar view has been taken by this Court in the case of ***Sukhwinder Singh Vs. State of Punjab CRM-M-13534-2022 decided on 05.04.2022.***

Similarly the Hon'ble Supreme Court in ***Amarsingh Ramjibhai Barot Vs. State of Gujarat 2005 AIR (Supreme Court) 4248*** held as under:-

“A number of contentions were urged in the High Court by the appellant in support of his appeal. It was contended that the conviction was liable to be set aside as there was non compliance with the provisions of section 42(2), 50, 52 and 57 of the NDPS Act. There is no substance in this contention. The High Court, however, was of the view that the conviction of the appellant under section 17 and 18 read with section 29 of the NDPC Act was not correct. On the other hand, the High Court came to the conclusion that the appellant was liable to be convicted under Section 21(c) and also under Section 21(c) read with Section 29 of the Act, for individually being in possession of 920 grams and for being jointly, in conspiracy with the deceased, in possession of 4.250 kgs. of the prohibited substance recovered. In the view of the High Court, the total amount of prohibited substance recovered (personally from the appellant and also from the joint possession of the two accused) being more than “commercial quantity” as defined under the applicable notification, the appellant was liable to be visited with the minimum punishment of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. The High Court was also of the view that, even if the quantity of 920 grams recovered from the appellant alone were to be considered, it would

warrant conviction under Section 21(c) and the minimum sentence of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. Being aggrieved thereby, the appellant is before this Court.

The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of “commercial quantity” and, therefore, attracted Section 21(c) of the NDPS Act.

Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29

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was attracted.”

He further contends that trial may take a considerable time to conclude. Therefore, no fruitful purpose would be served by detaining the petitioner behind bars.

Learned State counsel, while placing on record the custody certificate, opposes the prayer for grant of regular bail to the petitioner on the ground that commercial quantity of contraband has been effected from the co-accused of the petitioner thereby attracting the bar of Section 37 of the NDPS Act. Petitioner is a habitual offender as he is involved in one more case bearing FIR No.159 dated 21.10.2019 under Sections 22/29/61/85 of the NDPS Act, registered at Police Station Maur, District Bathinda, which is pending trial.

Learned counsel for the petitioner submits that mere pendency of other cases cannot be made ground to deny the bail to the petitioner in view of the judgment rendered by the Hon'ble Supreme Court of India in **Prabhakar Tewari Vs. State of U.P. and another, 2020 (1) R.C.R. (Criminal) 831.**

To the same effect is the judgment of the Hon'ble Apex Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382**, wherein it has been held as under: -

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

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I have heard learned counsel for the parties and perused the record.

Keeping in view the custody of the petitioner, which is 04 months and 27 days; co-accused have already been granted the concession of regular bail by a Co-ordinate Bench of this Court; investigation is complete; challan has been presented; charges have been framed and out of 13 prosecution witnesses, only 02 prosecution witnesses have been examined and trial is likely to take a considerable time, however, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

The petition stands disposed off accordingly.

31.01.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No