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

**CRM-M No.54573 of 2022(O&M)
Date of Decision: 17.01.2023**

Gursewak Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. R.S. Pandher, Sr. DAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

The petitioner seeks grant of regular bail under Section 439 Cr.P.C in his fourth attempt in case bearing FIR No.9 dated 16.04.2018 under Sections 21, 25, 29 of the NDPS Act at Police Station State Special Operations Cell, Amritsar, District Amritsar.

CRM-M No.36767 of 2019, CRM-M No.15252 of 2021 and CRM-M No.49512 of 2021 were got dismissed as withdrawn vide orders dated 28.01.2021, 10.09.2021 and 26.08.2022 respectively.

The FIR was registered on the basis of secret

information to the effect that notorious gang belonging to one gangster Jagdeep Singh @ Jaggu Bhagwanpuria (now confined in Hoshiarpur Jail) is involved in smuggling big consignment of heroin after conniving with Pakistani smuggler namely Malak. The secret information was considered to be genuine and the petitioner and Ranjit Singh were apprehended. 3 Kg heroin from the petitioner and 4 Kg heroin from the dicky of the scooter belonging to Ranjit Singh were recovered.

Learned counsel for the petitioner with reference to custody certificate submits that the petitioner is in custody for the last more than 4 years and 9 months as on date. The petitioner is not involved in any other NDPS case. Learned counsel further submits that *de hors* the quantity allegedly recovered from the petitioner, the custody alone is sufficient to grant regular bail to the petitioner 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.”

Learned counsel for the petitioner further submits that the factum of involvement of Jagdeep Singh @ Jaggu Bhagwanpuria has not been found as a matter of fact and the aforesaid person has been declared as innocent in the present case.

Vide order dated 26.08.2022 while dismissing CRM-M No.49512 of 2021, the trial Court was directed to make every endeavour to conclude the trial at the earliest.

As per status report earlier filed by way of affidavit of Harwinderpal Singh, PPS, Deputy Superintendent of Police, State Special Operation Cell, Amritsar, only one prosecution witness was examined and one more witness was partly examined as on 07.12.2022.

Today, the learned State counsel on instructions from

ASI Sukhwinder Singh submits that 5 prosecution witnesses have been examined and one prosecution witness has been examined partly and the next date of hearing before the trial Court is 19.01.2023. Fresh status report dated 29.12.2022 is also taken on record.

In view of long incarceration of the petitioner for the last more than 4 years and 9 months and in view of the fact that the petitioner is not involved in any other NDPS case, I deem it appropriate to enlarge the petitioner on regular bail without meaning anything on the merits of the case.

In view of above, petition is allowed. Petitioner is ordered to be released on regular bail, subject to his furnishing heavy 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.

17.01.2023

Prince

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No