

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

204

**CRM-M-56682 of 2022
Date of Decision: 04.05.2023**

Manjit Singh @ Bitta

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arihant Jain, Advocate and
Mr. Rishav Jain, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. A.G., Punjab.

VIKAS BAHL, J (ORAL)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.67 dated 08.05.2022, under Sections 15, 25, 29, 61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Dhanaula, District Barnala.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 03.06.2022 and investigation is complete and challan has been presented and there are 21 witnesses and none have been examined and thus, trial is likely to take time and that the petitioner is not involved in any other case. It is submitted that the previous bail application of the petitioner was dismissed as withdrawn on 30.08.2022 and even thereafter, subsequent time has elapsed but no witness has been examined and the trial has not made any progress, thus, entitling the petitioner to file the present petition.

Learned counsel for the petitioner has argued that in the present case, even as per the case of the prosecution, the recovery of 100 kg. of poppy husk has been effected from co-accused Sukhwinder Singh and on

the basis of disclosure statement of said Sukhwinder Singh, the present petitioner has been nominated as an accused and recovery of only 4 kg. of poppy husk, which is far lesser than the commercial quantity, has been effected from the present petitioner. It is submitted that there is no material linking the present petitioner with the recovery of 100 kg. of poppy husk made from co-accused Sukhwinder Singh, other than the disclosure statement of said Sukhwinder Singh, and as per the law laid down by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1**, the disclosure statement of co-accused Sukhwinder Singh is not sufficient to connect the petitioner with recovery of 100 kg. of poppy husk from the co-accused Sukhwinder Singh. It is further submitted that in such a situation, the recovery cannot be clubbed together and for the said purpose, has relied upon a judgment of a Co-ordinate Bench of this Court in the case of **Navneet Kaur @ Neetu Vs. State of Punjab, passed in CRM-M-29038-2022, vide order dated 14.07.2022.**

Learned State counsel, on the other hand, has opposed the present petition for grant of regular bail and has submitted that recovery of 100 kg. of poppy husk was made from Sukhwinder Singh and said Sukhwinder Singh had given a disclosure statement implicating the present petitioner and thereafter, the petitioner was arrested and from the house of the petitioner, recovery of 4 kg. poppy husk was effected. It is submitted that Sukhwinder Singh in his disclosure statement had stated that the petitioner had come in his car (make Figo) to deliver the poppy husk and the said car has already been recovered from him. The other facts have, however, not been disputed.

This Court has heard learned counsel for the parties and has

perused the paper book.

In the present case, it is not in dispute that the petitioner was arrested on 03.06.2022 and the investigation is complete and challan has been presented and there are 21 witnesses and none have been examined and thus, trial is likely to take time and the petitioner is not involved in any other case. Recovery of 100 kg. of poppy husk had been effected from co-accused Sukhwinder Singh and the petitioner has been implicated in the present case on the basis of disclosure statement made by said Sukhwinder Singh. On the basis of said disclosure statement, the petitioner was arrested and 4 kg. of poppy husk has been recovered from the house of the petitioner, as per the case of the prosecution. The recovery effected from the petitioner falls within the ambit of non-commercial quantity inasmuch as the commercial quantity for poppy husk starts from 50 kg. Other than the disclosure statement, there is no tangible material to connect the petitioner with the recovery of 100 kg. of poppy husk made from co-accused Sukhwinder Singh. It has been held by Hon'ble Supreme Court in ***Tofan Singh's case*** (supra) that disclosure statement recorded while in the custody of police is inadmissible in evidence. The Co-ordinate Bench of this Court in the case of ***Navneet Kaur @ Neetu*** (supra) which had almost similar facts as the present case, after relying upon various judgments came to the conclusion that in such a situation, recovery effected cannot be clubbed. In the said case of ***Navneet Kaur @ Neetu***, the initial recovery was made from co-accused of Pargaso Kaur and the said accused had named Pawan Kumar who further named Navneet Kaur (petitioner therein) as the person who sold the tablets to the person from whom the recovery had been made. Recovery of 100 intoxicant tablets was also effected from the said Navneet Kaur and the said tablets weighed 37 grams, which was non-commercial quantity. In

the facts and circumstances of the said case, it was observed that since, the recovery effected only from the petitioner was to be considered and was of non-commercial quantity, accordingly, bail was granted, even though, the custody of the petitioner was approximately 04 months. The relevant portion of the said judgment is reproduced as under:-

“This Court in Sukhdev Singh Vs. State of Punjab CRM-M-53872-2021(O&M) Decided on 27.04.2022 held as under:-

“3. The Counsel for the petitioner contends that the recovery effected from him was 1Kg 350 grams of Opium which was a non commercial quantity and recovery from his co-accused could not be clubbed to his recovery 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 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 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 was attracted.

4. The Counsel for the State on the other hand contends that the total quantity of the contraband recovered from both the accused is to be considered in order to adjudicate upon the bail application in which case the recovery was of a commercial quantity thereby attracting the bar of Section 37 of the NDPS Act.

5. I have heard counsel for both the parties at length.

6. A perusal of the orders/judgments reproduced herein above would show that the total quantity recovered from both the accused are not to be seen collectively when individual recovery from each accused is of non commercial quantity.

In view of the above, since the recovery from the petitioner is of a non commercial quantity of Opium the rigors of Section 37 of the NDPS Act are not applicable to the case of the petitioner.

A similar view has been taken by a Co-ordinate Bench of

this Court in Sarban Singh @ Lakhi @ Sarwan Kumar Vs. State of Punjab CRM-M-49251-2021 Decided on 02.12.2021. Thus it is apparent that only the recovery from the present petitioner is to be considered to examine as to whether the same is of commercial or non commercial nature. In the present case the recovery is of approximately 37 grams of Tramadol which is less than the commercial quantity of 50 gms, and, therefore, the rigors of Section 37 of the NDPS Act shall not be applicable to the present case.”

13. Final adjudication on the question as to whether the recovery effected from the present petitioner is to be clubbed with the recovery effected from Sukhwinder Singh or not, would be considered at the time of trial and since there are strong arguable points in favour of the petitioner, thus, keeping in view the abovesaid facts and circumstances as well as the law laid down in the above cited judgments, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and 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 or influence 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 a final 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 petition.

(VIKAS BAHL)
JUDGE

04.05.2023
D.Bansal

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