

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

(206)

CRM-M-58614-2022

Date of decision: - 16.02.2023

Abod Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Lakshay Bector, Advocate  
for the petitioner.

Mr. Ferry Sofat, Additional Advocate General, Punjab.

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VIKAS BAHL, J. (ORAL)

This is the second petition under Section 439 Cr.P.C. to grant regular bail to the petitioner in FIR No.137 dated 23.08.2022, registered under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station Pau, District Ludhiana.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 25.08.2022 and out of total 13 prosecution witnesses, none have been examined, thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that earlier bail application of the petitioner was withdrawn on 09.12.2022 with liberty to file a fresh petition after rectifying the mistakes made in the petition and thereafter, the present petition has been filed and thus, in effect the present petition is the first

bail application filed by the petitioner. It is contended that there are several arguable points in the present case including the point that as per the case of the prosecution, the petitioner is stated to have thrown the polythene bag which contained the alleged tablets on seeing the Police and the recovery in the present case has been effected from the road and thus, it was not effected from the conscious possession of the present petitioner and on the said aspect, the petitioner has relied upon the decision of a Coordinate Bench of this Court in ***CRM-M-16150- 2021 dated 19.07.2021*** titled as ***'Balwinder Singh Vs. State of Punjab'***, and on judgment in ***CRM-M-33733-2020*** dated 15.03.2021 titled as ***'Manjit Singh Vs. State of Punjab'***, alongwith connected matters and also relied upon a judgment reported as ***2019(4) RCR (Criminal) 714*** titled as ***'Ravi Kumar Vs. State of Punjab'***. It is submitted that in the FIR, the allegation with respect to the throwing of the polythene bag which allegedly contained intoxicant tablets has been made in order to circumvent the mandatory provisions of Section 50 of the NDPS Act with respect to carrying out personal search. It is further submitted that in the present case, the recovery which has been effected from the petitioner was of 300 tablets, which is apparent from the recovery memo dated 23.08.2022 and further even as per the charge-sheet, the petitioner has been charged for being in possession of 300 loose intoxicant tablets containing Tramadol Hydrochloride and the weight of said tablets, keeping in view the FSL report, would total to 94 grams, which would fall within the definition of non-commercial quantity, as the commercial quantity for the same starts from 250 grams.

Learned State counsel has opposed the present application for regular bail and has submitted that it was in the presence of the police party that the petitioner had thrown the polythene bag containing the intoxicant tablets and thus it cannot be said that the petitioner was not in conscious possession of the said intoxicant tablets. It is further submitted that in the present case, apart from the petitioner, there were two other co-accused and from each of the three accused, recovery of 300 tablets has been effected, thus, totalling the recovery to 900 tablets of Tramadol Hydrochloride and the weight of the said 900 tablets totals at 282 grams, which would fall within the ambit of commercial quantity and thus, the bar under Section 37 of the NDPS would apply. The other facts, however, have not been disputed by learned State counsel.

This Court has heard learned counsel for the parties and has gone through the paper-book.

In **Balwinder Singh's case (Supra)**, a Coordinate Bench of this Court has held as under:

*“Briefly stated, case of the prosecution against the petitioner is that on 04.03.2019 police party headed by ASI Ravinder Singh on patrolling duty were coming to Tehang Octroi via Saiflabad. When they reached near Civil Hospital, Phillour they saw the petitioner coming on foot who on seeing the police party threw one heavy weight black coloured polythene bag and tried to run away. The police apprehended the petitioner and on search as per prescribed procedure recovered 55 intoxicant injections containing Buprenorphine 2 ml each and 55 injections containing Avil 10 ml each from the polythene bag.*

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*On the other hand, learned State Counsel has argued that the petitioner kept in his conscious possession commercial quantity of*

*intoxicant injections. Rigors of Section 37(1)(b) are fully applicable to the case of the petitioner. The petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.*

*However learned State Counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.*

*In CRM-M-13662-2020 titled as 'Niranjana Kumar @ Kaka Vs. State of Punjab' decided on 06.07.2020; CRM-M-14474- 2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 24.06.2020; CRM-M-21020-2020 titled as 'Amritpal Singh Lamberdar Vs. State of Punjab' decided on 11.08.2020; CRMM6433-2018 titled as 'Pawan Kumar Vs. State of Punjab' decided on 23.02.2018 and CRM-M-16380-2020 titled as 'Buta Singh Vs. State of Punjab' decided on 13.08.2020 where recovery of narcotic/psychotropic drug/substance was made from bag allegedly thrown on the road side by the accused, the case was considered to involve question as to whether the accused could be said to be in conscious possession thereof and the accused was granted regular bail.*

*In 'Chitta Biswas @ Subhash Vs. State of West Bengal' Criminal Appeal No.245 of 2020 SLP (Criminal) No.8823 of 2019 decided on 07.02.2020 where recovery of 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity was made from the accused who was in custody since 21.07.2018 and out of 10 prosecution witnesses only 4 prosecution witnesses had been examined, the accused was granted bail by Hon'ble Supreme Court.*

*In the present case recovery of intoxicant injections was allegedly made from polythene bag allegedly thrown on the road side. The case involves debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from the polythene bag lying on the road side. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37 (1)(b) of the NDPS Act stand satisfied by due implication. Further, the petitioner is in custody since 04.03.2019. Prosecution evidence is yet to be recorded. The trial is likely to take long time due to restrictions imposed to prevent spread of Covid-19.*

*In view of the above referred judicial precedents and facts and circumstances of the case but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the*

*concession of regular bail.*

*Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.*

*However, bail is granted to the petitioner subject to the condition that he will not commit any offence under the NDPS Act after his release on bail and in case of involvement of the petitioner in commission of any offence under the NDPS Act in future, his bail in the present case shall also be liable to be cancelled on application to be filed in this regard.”*

A perusal of the above judgment would show that although in the said case also, the recovery effected was of commercial quantity but, since the recovery of the polythene bag therein was also after the same had been thrown on the ground, thus, it was observed that it was a debatable issue whether the petitioner could be said to be in conscious possession of the narcotic or not. It was also observed that the rigors of Section 37(1) (B) of the NDPS Act stood satisfied by due implication.

Even in **Manjit Singh's (supra) case**, a Coordinate Bench of this Court dealt with a case in which, the allegation was that the petitioner therein was holding a polythene bag and on seeing the police party, he threw the said polythene bag. It was observed that it was not possible to conclude that the recovery effected was made from the conscious possession of the petitioner therein or not. The said case was also a case of commercial quantity.

A Co-ordinate Bench of this Court in a detailed judgment titled as **Ankush Kumar @ Sonu v. State of Punjab, reported as 2018 (4) RCR (Criminal) 84**, had considered the provision of Section 37 of the

NDPS Act 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 v. 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 v. 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 v. 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 v. State of Punjab and other*** connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, 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 above-mentioned 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; (2021) 5 SCC 724** was also taken into account and the provisions of Section 37 of NDPS Act 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 than that of suspension of sentence, which is after conviction.

In the present case, the petitioner has been in custody since 25.08.2022 and out of total 13 prosecution witnesses, none have been examined, thus, the trial is likely to take time. The petitioner is stated to be not involved in any other case. There are several arguable points in the present case including the question as to whether the recovery of 300 tablets had been made from the conscious possession from the present petitioner or not, keeping in view the judgments of the Co-ordinate Benches of this Court relied upon in the earlier part of the judgment and the question as to whether, if once the petitioner has been charged for possession of 300 tablets and the recovery falls within the ambit of non-commercial quantity, then, whether the same is to be clubbed with

the recovery effected from two other co-accused or not, would be finally adjudicated upon during the course of trial.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is directed to be released on regular 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. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize / intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

February 16, 2023  
naresh.k

( VIKAS BAHL )  
JUDGE

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|----------------------------|--------|
| Whether reasoned/speaking? | Yes/No |
| Whether reportable?        | Yes/No |