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

CRM-M-59447-2022 (O&M)
Date of decision : 08.02.2023

Mangal Ram @ Manga

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. S.P.S. Khaira, Advocate for the petitioner.

Mr. Ferry Sofat, Addl. A.G. 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.89 dated 13.09.2021 registered under Sections 20, 25, 27, 29 of the NDPS Act, 1985 at Police Station Government Railway Police Ludhiana, District Ludhiana, Punjab.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 13.09.2021 and there are 10 prosecution witnesses, out of which, only one witness has been examined and thus, the conclusion of trial is likely to take time. It is further submitted that the earlier bail application filed by the petitioner was withdrawn on 21.09.2022 at that stage and even subsequent to the same, sufficient time has elapsed and the trial has not made much progress. It is contended that the petitioner

is not involved in any other case and there are arguable points involved in the present case. It is further contended that as per the case of the prosecution, recovery of small-small pieces of contraband which was stated to be 'charas' was allegedly effected from the petitioner and two other co-accused and when the said small pieces were weighed then the same came out to be 4 kgs. It is argued that a perusal of FSL report dated 16.11.2021 (Annexure P-3) would show that only one sample containing 50 grams of greenish brown coloured hard solid material had been sent for examination, out of the entire alleged recovery of 4 kgs of 'charas'. It is further argued that since it was the case of the prosecution itself that recovery of contraband was of small-small pieces and since no sample was taken from each of the small pieces nor the entire contraband was sent, nor even a substantial portion of the said contraband was sent thus, it could not have been presumed that the balance amount of the alleged contraband recovered i.e., 3 kg 950 grams, could also be categorized as 'charas'. In support of his arguments, learned counsel for the petitioner has relied upon a judgment passed by the Hon'ble Supreme Court in case titled as “**Gaunter Edwin Kircher Vs. State of Goa, Secretariat Panji, Goa**”, reported as **1993 AIR (Supreme Court) 1456**. It is also submitted that on the basis of the abovesaid argument, at best, the case against the petitioner and two other accused could be of an alleged recovery of 50 grams of 'charas' which would be far less than the commercial quantity as the commercial quantity stipulated for the same starts from 1kg.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted

that in the present case, as per the provisions of Section 52-A of the NDPS Act, 1985, the Judicial Magistrate Ist Class, vide order dated 13.9.2021 had drawn two samples of 50 grams each, out of which, one sample was sent to the Judicial Malkhana and another sample of 50 grams was sent to the Chemical Examiner and thus, the provision of Section 52-A of the NDPS Act, 1985 was complied with and for the said purpose, he has referred to order dated 13.09.2021 which is taken on record and marked as "Mark-A".

Learned counsel for the petitioner, in rebuttal, has submitted that even a perusal of said order would show that neither sufficient quantity of the contraband nor samples were taken from each piece nor was a homogenous mixture of small pieces recovered was made and thus, law laid down by the Honble Supreme Court would apply to the facts and circumstances of the present case.

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

The Hon'ble Supreme Court in the case of ***Gaunter Edwin Kircher's*** case (Supra) had held as under:-

"As already mentioned only one piece was sent for chemical analysis and P.W.1, the Junior Scientific Officer who examined the same found it to contain Charas but it was less than 5 gms. From this report alone it can not be presumed or inferred that the substance in the other piece weighing 7 gms. also contained Charas. It has to be borne in mind that the Act applies to certain narcotic drugs and psychotropic substances and not to all other kinds of intoxicating substances. In any event in the absence of positive proof that both the pieces recovered from the accused contained Charas only, it is not

safe to hold that 12 gms. of Charas was recovered from the accused. In view of the evidence of P.W.1 it must be held that the prosecution has proved positively that Charas weighing about 4.570 gms. was recovered from the accused. The failure to send the other piece has given rise to this inference. We have to observe that to obviate this difficulty, the concerned authorities would do better if they send the entire quantity seized for chemical analysis so that there may not be any dispute of this nature regarding the quantity seized. If it is not practicable, in a given case, to send the entire quantity then sufficient quantity by way of samples from each of the packets or pieces recovered should be sent for chemical examination under a regular panchnama and as per the provisions of law.”

In the abovesaid case, the appellant was convicted for a period of 10 years of rigorous imprisonment and the recovery from the appellant therein was two pieces of charas which were found to be of 7 grams and 5 grams respectively and one piece weighing 5 gram was sent for chemical analysis and the other piece weighing 7 grams was not sent nor any part of it was sent by way of sample for chemical analysis. The Hon'ble Supreme Court, in the said facts and circumstances, came to the conclusion that it could not be presumed that the second piece which weighed 7 grams also contained charas. It was observed that in such a situation, either the entire quantity seized should have been sent and if not practicable, then, sufficient quantity by way of samples from each of the packets or pieces recovered should have been sent for chemical examination under a regular panchnama and as per the provisions of law. The Hon'ble Supreme Court, after considering the facts of the said case, took into consideration only that piece which was sent for FSL and since, the said piece weighed 4.570 grams

which was less than small quantity thus, reduced the conviction of the appellant therein to a period of six months under Section 27 of the Act. In the said case, it was also found that the appellant therein had kept the said quantity i.e. 4.570 grams for his self-consumption. The ratio of law laid down in the abovesaid judgment would prima facie apply to the present case inasmuch as in the present case, the alleged recovery, as per the recovery memo, is stated to be of small-small pieces which together weighed 4 kgs. It is not in dispute that 50 grams of the said recovery, out of 4 kg, has been sent for FSL and the same cannot be considered to be a sufficient quantity much less the entire quantity. Moreover, neither the recovery memo nor the FSL report nor the order passed under Section 52-A of the NDPS Act, 1985 shows that the samples were taken from each of the pieces or that a homogenous mixture was made and thus, the argument of learned counsel for the petitioner to the effect that at best, he alongwith other co-accused, could be held liable for recovery of 50 grams of 'charas', cannot be outrightly rejected. The said argument would be finally considered by the trial Court but the same raises a strong arguable points in favour of the petitioner. In the present case, the petitioner is in custody since 13.09.2021 and out of 10 prosecution witnesses, only one witness has been examined and thus, the conclusion of trial is likely to take time and that the petitioner is stated to be not involved in any other case.

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 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 (CrI.) 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 10343-2021 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 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; (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.

Keeping in view the abovesaid facts and circumstances as also the law laid down in the abovesaid judgments, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the Act of 1985.

Accordingly, 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. 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 an accused, 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/her 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 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.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

08.02.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No