

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-13486-2023
Date of decision : 22.03.2024

Sukhchain Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Parminder Singh Sekhon, Advocate
for the petitioner.

Ms.Akshita Chauhan, DAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.220 dated 01.11.2021 registered under Sections 15 and 25 of the NDPS Act at Police Station Dharamkot, District Moga.
2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 25.01.2023 and the investigation is complete and the challan has already been presented and there are 25 witnesses, out of which, only 3 witnesses have been examined and thus, the trial is likely to take time. It is further submitted that the petitioner was not named in the FIR which was registered on 01.11.2021 and although 12 persons were specifically named and in the FIR it was also mentioned that the secret informer had taken the names of the said 12 persons, who were

stated to be involved in buying and selling of poppy husk. It is argued that there was no allegation levelled against the present petitioner in the same and that as per the short reply dated 09.01.2024 filed by way of affidavit of Ravinder Singh, PPS, Deputy Superintendent of Police, Dharamkot, District Moga on behalf of the State, recovery of poppy husk has been effected from two vehicles i.e., one truck no.HR-64-6149 and one Xylo car without number plate and the present petitioner is not the owner of either of the two vehicles nor was driving the same. It is submitted that in paragraph 9 of the said affidavit, it has been stated that one Angrej Singh son of Gurbux Singh, resident of Hanuman Chowk, Ratia, was the registered owner of truck no.HR-64-6149 and he had sold the said truck to Parkash Singh son of Gurcharan Singh, resident of Malout and as per investigation, the Xylo car was in the ownership of Randhir Singh son of Mohinder Singh, resident of Adarsh Nagar, Phagwara. It is further submitted that no recovery has been effected from the present petitioner and the petitioner is not involved in any other case under the NDPS Act. It is argued that the petitioner was implicated in the present case on 25.04.2022, after a delay of more than 5 months, solely on the ground that two vehicles were parked on the land of a godown, which was owned by the present petitioner. It is stated that as per paragraph 5 of the affidavit of Ravinder Singh filed on behalf of the State, it has been recorded that as per the disclosure statement of Pippal Singh it is he, who had purchased the property under neath the godown from one Karam Chand resident of Dharamkot @ Rs.85,000/- per marla in the name of the petitioner Sukhchain Singh, who was his close relative and after that Pippal Singh had constructed a godown there. It is further stated that the recovery is not from the godown but from the vehicles which were parked

in the land where the godown is situated and even as per the case of the prosecution, it is not the petitioner who had purchased the same by paying consideration and it is rather co-accused Pippal Singh, who had purchased the same. In such a situation, it is submitted that it cannot be stated that the petitioner was in conscious possession of the poppy husk. Learned counsel for the petitioner has relied upon a judgment of a Coordinate Bench of this Court in *CRM-M-16150-2021 dated 19.07.2021* titled as “*Balwinder Singh Vs. State of Punjab*” to contend that in such a situation, it is matter of debate as to whether the petitioner could be stated to be in conscious possession of the poppy husk in question or not. It is argued that 8 persons named in the FIR have been granted anticipatory bail by the Coordinate Bench including Karamjeet Singh @ Karamjit Singh in CRM-M-51048-2021 decided on 22.03.2022, Gurjinder Singh @ Motu in CRM-M-51800-2021 decided on 22.03.2022, Inderjit Singh in CRM-M-52014-2021 decided on 22.03.2022, Lakhwinder Singh @ Kaku in CRM-M-52042-2021 decided on 22.03.2022, Arasal Singh @ Rasal Singh @ Nanu in CRM-M-53114-2021 decided on 22.03.2022 and Jagraj Singh in CRM-M-50383-2021 decided on 22.03.2022.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery in the present case is of commercial quantity and thus, bar under Section 37 of the NDPS Act would apply in the present case. It is further submitted that although it has been stated in paragraph 5 of the affidavit that it is Pippal Singh, who had purchased the property under neath the godown from one Karam Chand resident of Dharamkot @ Rs.85,000/- but the same was in the name of the petitioner and thus, the involvement of the petitioner is also

prima facie established. It is argued that poppy husk has been recovered from the vehicles, which were parked in the land owned by the petitioner and thus, the petitioner does not deserve the concession of regular bail.

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

5. With respect to the rigors of Section 37 of the NDPS Act, it would be relevant to note the various cases wherein the Hon'ble Supreme Court and High Courts have granted bail / suspension of sentence in cases involving commercial quantity.

6. In ***Criminal Appeal No.965 of 2021*** titled as ***Dheeren Kumar Jaina v. Union of India***, the Hon'ble Supreme Court in a case where allegation in the charge sheet 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.

7. A Coordinate 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.

8. 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”***.

9. 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.

10. 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.

11. 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.”

12. 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 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***; reported as **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.

13. 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.

XXX---XXX---XXX

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 debatable issue with respect to the accused therein being to in conscious possession of the narcotic recovered or not, was raised, it was observed that the rigors of Section 37(1) (B) of the NDPS Act stood satisfied by due implication.

14. In the present case, the petitioner has been in custody since

25.01.2023 and the investigation is complete and the challan has already been presented and there are 25 witnesses, out of which, only 3 witnesses have been examined and thus, the trial is likely to take time. In the present case, there are arguable points in favour of the petitioner. The petitioner is not named in the FIR although 12 persons have been specifically named in the FIR which as per the secret informer, were the persons, who in connivance with each other were bringing poppy husk from the other States and were supplying to their customers. No recovery has been effected from the present petitioner and even as per the paragraph 4 of the affidavit of Ravinder Singh, PPS, Deputy Superintendent of Police, Dharamkot, filed on behalf of the State, recovery of commercial quantity of poppy husk has been effected from one truck no.HR-64-6149 and one Xylo car without number plate and the said two vehicles are not owned by the petitioner nor the petitioner was caught at the spot with the said vehicles and as per the averments made in paragraph 9 of the said affidavit, the said truck no.HR-64-6149 was owned by Angrej Singh son of Gurbux Singh who had sold the same to Parkash Singh and said Xylo car was stated to be in the ownership of Randhir Singh son of Mohinder Singh. The petitioner was involved in the present case on 25.04.2022 i.e., after the delay of 5 months from the date of registration of the present FIR, on the basis of disclosure statement of Pippal Singh and the details of the involvement of the petitioner in the case have been mentioned in paragraph 5 of the affidavit filed on behalf of the State, which is reproduced hereinbelow:-

“5. That during investigation of the case, on 11.11.2021 accused Pippal Singh was arrested by the police on the basis of production warrants and during the investigation he got recorded his disclosure statement u/s 27 of Evidence Act that on 13.10.2021 when he was produced before the Ld. Court of Mrs. Anjana,

Additional Sessions Judge, Moga, then his son Inderjit Singh @ Landa also met to him and both of them executed the plan for taking poppy husk. Inderjit Singh also informed him that time Buta Singh son of Gurbachan Singh, Karamjit Singh @ Karma son of Kuldip Singh residents of Daulewala and Mangal Singh son of Hansa Singh r/o Mander and 4- 5 other persons were also accompanied with him and all of them have to take the poppy husk together. Pippal Singh further disclosed that he directed his son to go to Nimach or Mansaur situated in MP State and after disclosing the name of Pippal Singh they can bring the poppy husk. Pippal Singh further disclosed that he had purchased the property under neath of godown from one Karam Chand resident of Dharamkot @ Rs.85000/- per Marla on the name of petitioner Sukhchain Singh, who is his close relative and after that he had conducted godown there.”

A perusal of the above would show that even as per the disclosure statement of the co-accused, it has been stated that it is the said co-accused who purchased the property under neath the godown from one Karam Chand resident of Dharamkot @ Rs.85,000/- per marla in the name of the petitioner Sukhchain Singh, who was his close relative and after that the co-accused had constructed the godown therein. It is the argument of learned counsel for the petitioner that the said godown was neither constructed by the petitioner nor was being used by the petitioner and no recovery has been even effected from the said godown, nor any recovery has been effected from the person of the petitioner and thus, it cannot be said that the petitioner was in conscious possession of the alleged contraband. It is not disputed that several co-accused of the petitioner including Karamjeet Singh @ Karamjit Singh, Gurjinder Singh @ Motu, Inderjit Singh, Lakhwinder Singh @ Kaku, Arasal Singh @ Rasal Singh @ Nanu and Jagraj Singh have been granted anticipatory bail by the Coordinate Bench of this Court. The arguments raised by learned counsel for the petitioner raise

several debatable issues which would be finally adjudicated during the course of trial but the said arguments make a strong prima facie case in favour of the petitioner at this stage.

15. Accordingly, the 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:-

- i). The petitioner will not tamper with the evidence during the trial.
- ii) The petitioner will not pressurize / intimidate the prosecution witness(s).
- iii). The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- iv). The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which they are suspected.
- v). 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.

16. 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.

17. Nothing stated above shall be construed as a final expression of

CRM-M-13486-2023122024:PHHC:041985

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

March 22, 2024
Davinder Kumar

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