

2024.PHHC:155328



296.

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

CRM-M-30783-2024

Date of decision: 25.11.2024

Rajpal Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. Monika Jalota, Advocate, for the petitioner
(through Video Conferencing).

Ms. Manjot Kaur, AAG, Punjab.

GURBIR SINGH, J.

1. This petition has been filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.077, dated 07.11.2023, registered under Sections 22(b), 27 of NDPS Act, 1985 at Police Station Lakhewali, District Sri Muktsar Sahib.

2. As per prosecution case, on 07.11.2023, the police party, while on routine patrol duty, apprehended petitioner and co-accused Ranjit Singh along with their motorcycle. On search of polythene bag thrown by the petitioner, 3 strips (each strip containing 10 tablets) of Etizolam tablets IP 0.25 mg were recovered and on search of polythene bag thrown by co-accused, 5 strips (each strip containing 10 tablets) of Tramadol Hydrochloride tablets IP 100 mg Colovidol 100 SR were recovered. The

petitioner and co-accused failed to produce any licence/bill or permit for keeping the said contrabands.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present FIR. Mandatory provisions of NDPS Act have not been complied with. The present FIR has been registered on the basis of chance recovery. The recovery is not from the conscious possession of the petitioner but from the bag alleged to be thrown by the petitioner. Challan in the case has been presented. There is no other case against the petitioner under the NDPS Act. Petitioner is in custody since 07.11.2023. No useful purpose would be served by further incarceration of the petitioner. Reliance is placed on case ***Dheeren Kumar Jaina Versus Union of India, Criminal Appeal No.965 of 2021; Ankush Kumar @ Sonu Versus State of Punjab, 2018(4) RCR (Criminal) 84; Narcotic Control Bureau Versus Vipin Sood and another, CRM-M-20177-2020, dated 25.02.2021; Amit Singh @ Moni Versus Himachal Pradesh, Criminal Appeal No.668 of 2020; Mukarram Hussain Versus State of Rajasthan and another, Criminal Appeal No.827 of 2021; Ajay Kumar @ Nannu Versus State of Punjab, CRM-M-10343 of 2021.***

4. Learned State counsel has opposed the bail to the petitioner considering the allegations levelled against him. However, it is fairly admitted that the petitioner is in custody since 07.11.2023. Necessary provisions of NDPS Act have been complied with. Challan in the case has been presented and charges have also been framed.

5. I have heard the submissions of learned counsel for the parties.

6. In case ***Dheeren Kumar Jaina (supra)***, the Hon'ble Supreme Court, after setting aside the order of the High Court, has granted bail to the petitioner, wherein the allegation was with respect to 120 kgs of ganja, being of commercial quantity.

6.1 In case ***Ankush Kumar @ Sonu (supra)***, a coordinate Bench of this Court had considered the provision of Section 37 of 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 Coordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

6.2 In case ***Narcotic Control Bureau Versus Vipin Sood and another (supra)***, the Hon'ble Supreme Court upheld the order dated

25.02.2021 passed in CRM-M-20177 of 2020 by the coordinate Bench of this Court whereby regular bail had been granted 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. Similarly, in case ***Amit Singh @ Moni (supra)***, the Hon'ble Supreme Court granted regular bail to an accused in a case involving 3 kgs 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 case, ***Mukarram Hussain (supra)***, bail was granted to an accused in a case wherein the quantity of the contraband was commercial in nature.

6.3 In case ***Ajay Kumar @ Nannu (supra)*** and other connected matters, a coordinate Bench of this Court, 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."

7. Considering the fact that the petitioner is in custody since 07.11.2023, culpability of the petitioner would be determined during trial

and completion of trial will take some time, this Court deems it appropriate to release the petitioner on regular bail.

8. Accordingly, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of concerned learned trial Court/Chief Judicial Magistrate/Duty Magistrate, with the further condition that he shall get his mobile number registered in the trial Court for receiving messages on CIS system and shall not change his mobile number during the pendency of the case. He shall also furnish his residential address to the trial Court as well as to the concerned police station and shall not change his residence without intimation to the concerned court. The court concerned may impose any other condition as it deems fit. In case of default, the trial Court is free to cancel the bail granted to the petitioner.

9. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of material available before it.

(GURBIR SINGH)
JUDGE

November 25, 2024
sanjeev

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