

2024.PHHC.134901



283.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36035-2024
Date of decision: 15.10.2024

Dinesh Malik Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Satnam Singh Gill, Advocate, for the petitioner.
Mr. Rajinder Singh Bhatta, DAG, Punjab.

GURBIR SINGH, J.

1. This petition has been filed under Section 483 of B.N.S.S. 2023, for grant of regular bail to the petitioner in case FIR No.151, dated 02.09.2023, registered under Sections 15 and 29 of NDPS Act, 1985 at Police Station Bhawanigarh, District Sangrur.
2. As per prosecution version, the aforesaid FIR was registered on the basis of secret information with the allegation that the petitioner and co-accused Ashok Kumar, who were closely related to each other, were trying to get the car, bearing registration No.HR 31R-6483, repaired standing on Bhawanigarh Samana Road, and two plastic bags were lying in the rear seat of said car from which poppy husk was clearly visible and if raid is conducted, the said contraband can be recovered. Accordingly, raid was conducted, however, no body was apprehended from the spot. On

checking of the car, four plastic bags containing 20 kilograms each of poppy husk i.e. total 80 kilograms of poppy husk, was recovered. From further search of the car, aadhar card of Ashok Kumar, his driving licence and aadhar card of petitioner and RC of said car issued in the name of one Satis son of Ram Singh, were recovered. The recovered material was taken into police possession in accordance with law. Petitioner was arrested in this case on 21.12.2023. On his interrogation, co-accused Ajay was nominated in this case and the offence under Section 29 of NDPS Act was added. The contraband recovered from the petitioner and co-accused falls under the commercial quantity.

3. Learned counsel for the petitioner has argued that the petitioner has been wrongly apprehended in this case. He is innocent. No recovery has been effected from his conscious possession. The story propounded by the prosecution is unbelievable. If someone is indulged in drug trade, he would not have carried the contraband in open bag and left the car abandoned on the spot. Moreover, such persons would not leave their identity card like aadhar card or the driving licence in the car having contraband. It is due to party faction and enmity in the village, petitioner has been implicated in the present case. Co-accused Ajay Kumar has been granted anticipatory bail by the coordinate Bench of this Court.

3.1 Learned counsel for the petitioner has further argued that the petitioner was not found at the spot. There is no other case pending against him. He is in custody since 21.12.2023. Nothing is to be recovered from the

petitioner. Conclusion of trial will take time. No useful purpose would be served by further incarceration of the petitioner.

4. Pursuant to order dated 05.08.2024, status report by way of affidavit dated 03.10.2024 of Rahul Kaushal, PPS, Deputy Superintendent of Police, Sub-Division Bhawanigarh, District Sangrur, on behalf of respondent-State, has been filed in Court today, which is taken on record.

4.1 Learned State counsel has opposed the present petition by contending that aadhar card of the petitioner was found in the car from which contraband was recovered. The contraband belonged to the petitioner and co-accused. The recovery is of commercial quantity. However, he has not disputed the custody of the petitioner and the fact that he is not involved in any other case.

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

6. A Co-ordinate Bench of this Court in a detailed judgment titled as ***Ankush Kumar @ Sonu Versus State of Punjab, 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.”

6.1 In ***Criminal Appeal No.827 of 2021*** titled as ***Mukarram Hussain Versus State of Rajasthan and another***, the Hon'ble Apex Court vide judgment dated 16.08.2021 was also pleased to grant bail wherein the quantity of the contraband was commercial in nature.

6.2 A co-ordinate Bench of this Court in ***CRM-M 10343 of 2021*** titled as ***Ajay Kumar @ Nannu Versus 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 Versus 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.

7. In the instant case, challan has already been presented. It is debatable, recovery in this case effected from the conscious possession of the petitioner.

7.1 Considering the fact that the petitioner is custody since 21.12.2023; out of 23 prosecution witnesses cited by the prosecution, no witness has been examined so far; 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

October 15, 2024
sanjeev

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