

Before Vikas Bahl, J.

BINDER—Petitioner

versus

STATE OF HARYANA—Respondent

CRM-M No.45324 of 2021

February 10, 2022

Code of Criminal Procedure, 1973—S.439—Narcotic Drugs and Psychotropic Substances Act, 1985—S.20 and 29—Recovery of 180 KGs of 'Ganja Patti'—Regular bail—To meet requirement of Section 37 of NDPS Act, Supreme Court and various High Courts have granted bail in cases involving commercial quantity—Therefore, accused entitled for regular bail—Daler Singh v. State of Punjab; 2007 (1) RCR (Criminal) 316 2007 (1) RCR (Criminal) 316, relied on.

Held that, 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; 2007 (1) RCR (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. It is apparent that to meet the requirement of Section 37 of the NDPS Act, various Courts have taken into consideration the merits of the case and the period of custody and where in a case there are arguable points on merits and the custody is also adequate, the Hon'ble

Supreme as well as various High Courts have granted bail even in cases involving commercial quantity.

(Para 20)

Krishan Singh, Advocate
for the petitioner.

Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

(1) This is the first petition under Section 439 of Cr.P.C. for grant of regular bail in FIR No.321 dated 03.08.2021, under Sections 20/29 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Industrial Sector-29, Panipat, District Panipat.

(2) The FIR in the present case had been registered on the statement of ASI Subhash Chand, who had stated that while he, along with other police officials, was present at bus stand Siwah, Panipat, the secret informer met them and informed them that two persons, namely, Bulet Kumar and Ravi were carrying 'Ganja Patti' in their vehicle bearing No.HR-56-B-9774 and had the intention of selling the said 'Ganja Patti' and on the basis of the said secret information, the police party stopped the truck bearing HR-56-B-9774 and from the same, co-accused Bulet Kumar and Ravi were arrested and after calling the Duty Magistrate Shri Satya Parkash Singla, SDO, PWD (B&R), Panipat and after following the procedure, a total quantity 180 KGs of 'Ganja Patti' was recovered. A perusal of the FIR would show that during the preliminary investigation, Ravi had stated that the above-said vehicle belonged to one Kuldeep and one Ram Mehar in equal shares and that he was doing the job of a driver with respect to the said vehicle and that about one month ago Ravi & Kuldeep had gone to Andhra Pradesh from Panipat in the said vehicle. It was further stated by Ravi that Kuldeep had many persons for supplying of 'Ganja Patti' and Kuldeep had informed him that huge quantity is to be brought. On 28.07.2021, the vehicle in question had been loaded with 27 Blue Colour Drums filled with chemical and 160 chemical plastic bags and handed over the same to Ravi. On 28.07.2021, Kuldeep had gone to him, to Visakhapatnam and had taken away his vehicle being HR-56-B-9674 and handed over the vehicle to Ravi and at that time Bulet Kumar was also there in the vehicle and Kuldeep, while handing over the vehicle, told Ravi and Bulet Kumar to take the Ganja Patti to Panipat and then the same be sold to Binder (petitioner), Ram Mehar.

(3) Learned counsel for the petitioner has submitted that even as per the the prosecution case, the petitioner was not apprehended at the spot and no recovery has been effected from him. It is further submitted that it is not even the case of the prosecution that the petitioner is the owner of the truck bearing HR-56-B-9774. It is also submitted that the petitioner is not even alleged to be the seller and it has been stated that as per the prosecution version, some of the 'Ganja Patti' was to be sold to the petitioner, but actually no such sale took place. It is further submitted that the petitioner has been in custody since 06.08.2021 and the challan has already been filed and there are 13 cited prosecution witnesses, none of whom have been examined and the trial is likely to take time to conclude, moreso, in view of the present pandemic. It is also stated that the petitioner is not involved in any other case under the NDPS Act and he is involved in one case, which was under the Punjab Cow Prohibition Slaughter Act, 1955, in which also, only a fine of Rs.200 has been imposed upon him.

(4) Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that there is also the disclosure statement of the petitioner and in the said disclosure statement, he has submitted that it is co-accused Kuldeep who used to bring Ganja Patti in his truck and that the petitioner had even requested Kuldeep to get 54 Kgs of 'Ganja Patti' for him. It is further submitted that since the truck was captured by the police, the said Ganja Patti could not be delivered to the petitioner. It is submitted that the said disclosure statement, as well as the statement of Ravi, would show that even the petitioner is involved in the present case.

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

(6) It is not in dispute that the petitioner has not been apprehended at the spot and no recovery has been effected from him. The recovery of 180 KGs of Ganja Patti is from co-accused, namely, Ravi and Bulet Kumar. There is no allegation of the prosecution to the effect that the petitioner is the owner of the truck bearing HR-56-B-9774 or that it was the present petitioner who was selling Ganja Patti. Even as per the statement of Ravi, it is clear that he had stated that co-accused Kuldeep and Ram Mehar were owners of the said truck in equal shares and he was working as the driver of the said vehicle and it was co-accused Kuldeep, who had told him and co-accused Bulet Kumar to deliver the present consignment. As per the said statement, the only allegation against the present petitioner is that some part of the

'Ganja Patti' i.e 54 KGs was to be sold to petitioner Binder for a sum of Rs.3 lakhs. It is not in dispute that no such sale has taken place. The petitioner has been in custody since 06.08.2021 and the challan has already been presented and there are 13 witnesses, none of whom have been examined and the trial is likely to take time, more so, in view of the present pandemic. The petition is not involved in any other case under the NDPS Act.

(7) Learned counsel for the petitioner, in order to overcome the bar under Section 37 of the NDPS Act, has relied upon several judgments. The said judgments have been collated herein below: -

- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.965 of 2021 titled as ***Dheeren Kumar Jaina*** versus ***Union of India***.
- Judgment of a Co-ordinate Bench titled as ***Ankush Kumar @ Sonu*** versus ***State of Punjab*** reported as 2018 (4) RCR (Criminal) 84; which was further challenged in the Hon'ble Supreme Court vide SLP (Criminal) Diary No.42609 of 2018 and the same was upheld.
- Judgment of a Co-ordinate Bench in CRM-M-20177-2020 titled as ***Narcotic Control Bureau*** versus ***Vipan Sood and another*** and the same 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.
- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.668 of 2020 titled as "***Amit Singh @ Moni*** versus ***Himachal Pradesh***."
- Judgment of the Hon'ble Supreme Court in Criminal Appeal No.827 of 2021 titled as ***Mukarram Hussain*** versus ***State of Rajasthan and another***.
- Judgment of a Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as "***Ajay Kumar @Nannu*** versus ***State of Punjab***".

(8) Further, reliance has also been placed upon the judgment of a Division Bench of this Court in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as, ***Harpal Singh*** versus ***National Investigating Agency and another***, dated 31.08.2021, wherein the Division Bench was pleased to grant suspension of sentence in a case where the recovery

was of commercial quantity. It has been argued that in the said Division Bench judgment, it had been noticed that the grounds for regular bail stand on better footing than for suspension of sentence, which is after conviction.

(9) Learned State counsel has opposed the present bail application of the petitioner and has submitted that commercial quantity of heroin to the extent of 500 gms had been recovered from the petitioner and even one .32 bore pistol without magazine had also been recovered from the petitioner. As far as the fact that bail has been granted to the co-accused of the petitioner and also the period of custody is concerned, the same has not been disputed but it has been submitted that the petitioner is involved in one more case.

(10) Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is already on bail in the said case and has relied upon a judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as *Maulana Mohd. Amir Rashadi* versus *State of U.P. and others*¹, reference has been made to the relevant portion of paragraph 6 which is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

(11) This Court has heard the learned counsel for the parties. Learned counsel for the petitioner has raised several arguments on the merits of the case. The first and primary issue raised is the noncompliance of Section 42 of the Act of 1985. The contention of learned counsel for the petitioner to the effect that secret information had not been taken down in writing independently and had not been sent to senior officer in writing is weighty. Reliance sought to be placed upon the judgment of Hon'ble Supreme Court of India in *Rajender Singh's* case (supra), which has been reproduced hereinabove, would also affirm that the said point would be a substantial point during trial so as to plead for acquittal of the petitioners. A perusal of judgment of the Hon'ble Supreme Court in *Rajender Singh's* case (supra) would show that although in the said case, a ruqa was recorded after the secret

¹ 2012 (2) SCC 382

information was received and the said ruqa was sent to the police station for registration of the FIR, it was held that since there was no record prepared with respect to the secret information received by him in writing and, thereafter, such information was not sent to the higher authorities, thus, the appeal of the accused therein was allowed by taking the ground of non-compliance of Section 42 of the Act of 1985 as one of the relevant grounds. Even the argument of the learned counsel for the petitioner to the effect that in the order dated 20.09.2021 passed in CRM-M-5374-2021, this Court had noticed the fact that the statement dated 18.02.2020 of Inspector Sukhwinder Singh, wherein the details of the FIR which was registered on 19.02.2020 had been mentioned and, thus, the arguments to the effect that the said documents / memos seem to have been fabricated carryweight, more so in light of judgment of Division Bench in **Didar Singh @ Dara's** case (supra), the relevant part of which has been reproduced hereinabove. The Division Bench of this Court in the said judgment had observed that a case of such fabrication / insertion seriously reflects on the integrity of prosecution version and the same would be a serious lapse in the prosecution case, thereby creating doubt as to the prosecution story.

(12) Learned counsel for the petitioner has also pointed out that even with respect to the recovery of the 32 bore pistol, the recovery memo, the vernacular of which has been attached at page No.94 of the paper book would show that although the date of the same is shown as 18.02.2020 but the details of the FIR, which is registered on 19.02.2020 has been shown on the top of the said document, which also does not rule out the possibility of fabrication of documents.

(13) The said facts would show that the petitioner has a strong case on merits but, however, no final opinion is being expressed with respect to the same as the same would cause prejudice to the case of prosecution during trial.

(14) Learned counsel for the petitioner has also highlighted the fact that in various cases where recovery of commercial quantity was involved, there the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, granted bail/suspension of sentence. Some of the said judgments are being discussed hereinafter. In Criminal Appeal No.965 of 2021 titled as **Dheeren Kumar Jaina** versus **Union of India**, the Hon'ble Supreme Court in a case where allegation in the chargesheet 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.

(15) A co-ordinate Bench of this Court in a detailed judgment titled as *Ankush Kumar @ Sonu* versus *State of Punjab*², 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.”

(16) 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.

(17) 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* versus *Vipan Sood and another*”. The Hon'ble Supreme Court of India vide order dated

² 2018 (4) RCR (Criminal) 84

12.10.2020 passed in Criminal Appeal No.668 of 2020 titled as “**Amit Singh @ Moni** versus **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.

(18) 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 16.8.2021 was also pleased to grant bail wherein the quantity of the contraband was commercial in nature.

(19) 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.”

(20) 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. Further, the judgment of Hon'ble the Supreme Court in **State (NCT of Delhi)** versus **Lokesh Chadha**³ 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

³ (2021) 5 SCC 724

to the Division Bench judgment of this Court in *Daler Singh* versus *State of Punjab*⁴ 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. It is apparent that to meet the requirement of Section 37 of the NDPS Act, various Courts have taken into consideration the merits of the case and the period of custody and where in a case there are arguable points on merits and the custody is also adequate, the Hon'ble Supreme as well as various High Courts have granted bail even in cases involving commercial quantity.

(21) This Court feels that in the present case, there are several arguable points which would be finally considered at the time of trial.

(22) Keeping in view the above-said facts and circumstances as well as the custody period of the petitioner, 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 trial Court / Duty Magistrate, subject to his 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, 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.

(23) In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of

⁴ 2007 (1) R.C.R. (Criminal) 316

bail before this Court.

(24) However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial.

Ritambhra Rishi