

Before Aman Chaudhary, J.

AVTAR SINGH SANGHA—Petitioner

versus

STATE OF PUNJAB—Respondent

CRM-M No. 36755 of 2022

September 05, 2022

Code of Criminal Procedure, 1973—Ss. 173, 439—The Narcotic Drugs and Psychotropic Substances Act, 1985 – Ss. 18, 29, 37, 25—Petition for regular bail—Held that recovery of 1 kg opium from petitioner and 9 kg opium recovered from co-accused should not be considered collectively when individual recovery from each accused is effected—No evidence to suggest abetment or criminal conspiracy within meaning of S. 29 of NDPS Act—Recovery from petitioner being 1 kg opium falls under non-commercial quantity—Petition allowed.

Held, that recovery of 1 kg opium was effected from the petitioner, whereas from his co-accused, who was stated to be a supplier, 9 kgs opium was recovered. From a plain reading of the afore quoted judgments, it reveals that the total quantity recovered from both the accused should not be considered collectively when individual recovery from each accused is effected. Thus, in view of the same, the recovery effected from the petitioner being one kg, falls under the category of non-commercial quantity, the rigors of Section 37 of the NDPS Act are not applicable to the case of the petitioner.

(Para 8)

Further held, that the petitioner has been in custody since 14.4.2022; though the challan has been filed as is the case of the parties, but the charges are yet to be framed, thus, the trial is yet to commence; as also the fact that the petitioner is stated to be not involved in any other case, his further detention behind the bars would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

(Para 8)

B.K. Saini, Advocate, *for the petitioner.*

M.S. Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

(1) The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.61, dated 14.4.2022, registered under Section 18 of NDPS Act (Section 29 NDPS Act added later on) at Police Station Baghapurana, District Moga.

(2) Succinctly, the facts of the case are that the petitioner was apprehended by ASI Varinder Kumar, while he was driving a car bearing registration No.PB-65-H-3183 and found in conscious possession of one kg. Opium, wrapped in an envelop without any permit or license and also Rs.400/- was recovered from the petitioner. After following the due procedure of the recovery under NDPS Act, the petitioner was arrested on 14.4.2022. He made a disclosure statement on 15.4.2022, wherein he specifically told to the police about time, place, recovery and registration of vehicle allegedly used in the crime by co-accused Lakhwinder Singh. After investigation in the matter, final report under Section 173 Cr.P.C. has been presented in the Court.

(3) Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The alleged recovery of 1 kg opium falls under the category of non-commercial quantity as per the Schedule appended with the NDPS Act. However, the learned Judge, Special Court, Moga while declining the anticipatory bail of the petitioner clubbed the recovery effected from co-accused Lakhwinder Singh, which was 9 kgs of opium. He further submits that no recovery is to be effected from the petitioner. He is in custody since 14.4.2022. Final report under Section 173 Cr.P.C. stands presented. He further submits that the petitioner is not involved in any other case.

(4) On the other hand, learned counsel for the State opposes the prayer of the petitioner. He further submits that the total quantity of the contraband recovered from both the accused is to be considered and thus, in the present case, the recovery effected from both the accused are 10 kgs of opium, which falls under the category of commercial quantity and thereby attracts bar of Section 37 of NDPS Act to grant of bail to the petitioner.

(5) I have heard the learned counsel for the parties.

(6) In CRM-M-33684-2020 titled as *Amit Dhanak versus State of Haryana* decided on 11.01.2021, a Coordinate Bench of this Court in similar set of facts, has held as under:

“Considering the facts; that in the FIR specific recovery has been attributed to all the three accused of 16Kgs of Ganja Patti each; they are in custody since August, 2020; no recovery is to be made; the individual recovery is of non commercial quantity and conclusion of trial would take time, both the petitions are allowed. The petitioners are ordered to be released on bail subject to their furnishing surety/bail bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned. ”

(7) Similarly, the Hon'ble Supreme Court in *Amar Singh Ramjibhai Barot versus State of Gujarat*¹ held as under:-

“A number of contentions were urged in the High Court by the appellant in support of his appeal. It was contended that the conviction was liable to be set aside as there was non-compliance with the provisions of section 42(2), 50, 52 and 57 of the NDPS Act. There is no substance in this contention. The High Court, however, was of the view that the conviction of the appellant under sections 17 and 18 read with section 29 of the NDPC Act was not correct. On the other hand, the High Court came to the conclusion that the appellant was liable to be convicted under Section 21(c) and also under Section 21(c) read with Section 29 of the Act, for individually being in possession of 920 grams and for being jointly, in conspiracy with the deceased, in possession of 4.250 kgs. of the prohibited substance recovered. In the view of the High Court, the total amount of prohibited substance recovered (personally from the appellant and also from the joint possession of the two accused) being more than “commercial quantity” as defined under the applicable notification, the appellant was liable to be visited with the minimum punishment of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. The High Court was also of the view that, even if the quantity of 920 grams recovered from the appellant alone were to be considered, it would warrant conviction under Section 21(c) and the minimum sentence of 10 years rigorous imprisonment plus fine of Rs. 1 lakh. Being aggrieved thereby, the appellant is before this Court.

¹ 2005 AIR (SC) 4248

The learned counsel appearing for the appellant urged only one contention in support of the present appeal. He contended that the High Court fell into an error in taking the total quantity of the offending substances recovered from the two accused jointly and holding that the said quantity was more than the commercial quantity, warranting punishment under Section 21(c) of the NDPS Act. He contended that as far as the appellant is concerned, the High Court erred by assuming that there was criminal conspiracy within the meaning of Section 29 of the NDPS Act, and erroneously proceeded under the said section. The High Court fell into a further error of assuming that because Section 29 was applicable, the total quantity of opium recovered was 920 grams plus 4.250 kgs. The counsel urged that because of this error the High Court took the wrong view that the total recovered opium was of “commercial quantity” and, therefore, attracted Section 21(c) of the NDPS Act. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased, Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted.”

(8) In the case in hand, similar to the above, the recovery of 1 kg opium was effected from the petitioner, whereas from his co-accused, who was stated to be a supplier, 9 kgs opium was recovered. From a plain reading of the aforequoted judgments, it reveals that the total quantity recovered from both the accused should not be considered collectively when individual recovery from each accused is effected. Thus, in view of the same, the recovery effected from the petitioner being one kg, falls under the category of non-commercial quantity, the rigors of Section 37 of the NDPS Act are not applicable to the case of the petitioner. Moreover, the petitioner has been in custody

since 14.4.2022; though the challan has been filed as is the case of the parties, but the charges are yet to be framed, thus, the trial is yet to commence; as also the fact that the petitioner is stated to be not involved in any other case, his further detention behind the bars would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

(9) Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to him not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurise/ intimidate the prosecution witnesses.
3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
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 of.
5. The petitioner shall not directly or indirectly make any coerce, inducement, threaten 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 any manner.
6. The petitioner shall not in any manner misuse his liberty.
7. Any infraction shall entail in withdrawal of the benefit granted by this Court.

(10) It is, however, clarified that nothing stated hereinabove be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made above, which have only been made for the purpose of adjudicating the present petition for grant of regular bail.