

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

CRM-M-39545-2016

Date of decision: 8.12.2016

Balraj Singh @ Raja and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.DS Gandhi, Advocate for the petitioners

SNEH PRASHAR, J.

The present petition under Section 438 of the Code of Criminal Procedure has been filed for grant of anticipatory bail to the petitioners in case First Information Report No.64 dated 5.10.2015 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') at Police Station Talwandi Chaudharian, District Kapurthala.

The accusation against the petitioners is that on 5.10.2015 when they were going on a motorcycle, they were intercepted by the police on suspicion that they were carrying some intoxicant substance. Complying with the provisions of the Act, their personal search was taken and a poly bag containing intoxicant powder was recovered from each of them. Two samples of 5 grams were separated from each bag and the residue of the intoxicant recovered from Balraj Singh came out to be 140 grams and from Gamdur Singh @ Nura 120 grams. The petitioners

were accordingly booked in the case particulars of which has been mentioned above. The samples were sent for chemical examination to the Forensic Science Laboratory. Awaiting the report of the FSL, the petitioners were allowed interim bail by learned Judge, Special Court, Kapurthala vide order dated 14.12.2015. The report of FSL has since been received and according to the same, the narcotic drug recovered from each of the petitioners has turned out to be of commercial quantity.

The submissions made by Mr.D.S. Gandhi, Advocate representing the petitioners have been heard.

Learned counsel for the petitioners submits that during the period on which the petitioners were allowed interim bail, they had been regularly attending the trial and have never misused the concession given to them. Therefore, considering the facts of the case and the conduct of the petitioners, they be given the benefit of anticipatory bail.

In the order dated 14.12.2015 vide which the petitioners were granted interim bail, learned Judge, Special Court, Kapurthala had specifically mentioned that in case after receipt of the Chemical Examiner report, the court reaches the conclusion that the alleged recovered quantity of contraband is commercial, the prosecution shall be at liberty to seek cancellation of bail.

Undisputedly, the report of the Chemical Examiner has been received and according to the same, the contraband recovered from the petitioners has been identified as “Diphenoxylate Hydrochloride” and the recovery falls in the category of commercial quantity. Since, the

interim bail granted to the petitioners had been cancelled by learned trial Court, they should have surrendered before the said Court and applied for regular bail. However, they have not opted to comply with the condition on which they were allowed interim bail.

The quantity of the contraband recovered from the petitioners falls in the category of commercial quantity and therefore, in view of the provisions provided under Section 37 of the Act, the petitioners are not entitled to concession of anticipatory bail. Accordingly, the present petition is dismissed.

8.12.2016
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No