

CRM-M-16332-2016;
CRM-M-11467-2016;
CRM-M-17677-2016;
CRM-M-38490-2016; and
CRM-M-39601-2016

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

- (1)

CRM-M-16332-2016

Date of decision:-9.8.2017

Amandeep Singh @ Amna

...Petitioner

Versus

State of Punjab

...Respondent
- (2)

CRM-M-11467-2016

Mangal Singh @ Manga and another

...Petitioners

Versus

State of Punjab

...Respondent
- (3)

CRM-M-17677-2016

Mangal Singh @ Manga

...Petitioner

Versus

State of Punjab

...Respondent
- (4)

CRM-M-38490-2016

Mandeep Singh @ Vicky and another

...Petitioners

Versus

State of Punjab

...Respondent

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(5)

CRM-M-39601-2016

Mandeep Singh @ Vicky

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Sandeep Kumar Passi, Advocate
for the petitioner (s).

Mr.K.S. Aulakh, DAG, Punjab.

H.S. MADAAN, J.

Vide this judgment, I propose to dispose of five petitions
i.e. **CRM-M-16332-2016** filed by petitioner - accused - Amandeep
Singh @ Amna for grant of regular bail to him in case FIR No.46 dated
11.4.2015, under Section 22 of NDPS Act, 1985, registered with Police
Station City, Kotkapura, District Faridkot, **CRM-M-11467-2016** filed
by petitioners – Mangal Singh @ Manga and Amandeep Singh @ Amna
for quashing of abovesaid FIR No.46 dated 11.4.2015 and subsequent
proceedings arising out of the same, **CRM-M-17677-2016** filed by
petitioner - accused - Mangal Singh @ Manga for grant of regular bail to
him in the abovesaid FIR No.46, **CRM-M-38490-2016** filed by
petitioners – Mandeep Singh @ Vicky and Lovepreet Singh for
quashing of FIR No.45 dated 11.4.2015, under Section 22 of NDPS Act,
1985, registered with Police Station City, Kotkapura, District Faridkot
and subsequent proceedings arising out of the same and **CRM-M-**

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39601-2016 filed by petitioner - accused - Mandeep Singh @ Vicky for grant of regular bail to him in case FIR No.45 dated 11.4.2015, under Section 22 of NDPS Act, 1985, registered with Police Station City, Kotkapura, District Faridkot.

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Briefly stated, the facts of the case as per prosecution story are that on 11.4.2015, a police party headed by ASI Gurmeet Singh from Police Station City, Kotkapura was present at culvert of Jaitu Road, Kotkapura, then three young men were spotted coming on a motorcycle from Jaitu side. ASI Gurmeet Singh signalled that motorcycle to stop but it tried to turn back, however, in the process motorcycle stopped; that three riders were apprehended by the police party and on being inquired, the one driving the motorcycle told his name as Mangal Singh @ Manga son of Pal Singh @ Kaka, Caste Majbi Sikh, resident of Jogian Wali Basti, Faridkot, the one sitting behind him disclosed his name as Manpreet Singh @ Mani son of Inderjeet Singh @ Pappi, Caste Goldsmith, resident of village Burj Mehma, District Bathinda, now resident of New Friends Colony, Near Jogian Wali Basti, Faridkot, whereas the third rider disclosed his name as Amandeep Singh @ Amna son of Surinder Singh @ Baba Shinda, Caste Mjbi Sikh, resident of Jogian Wali Basti, Faridkot; that the motorcycle which they were riding was having registration No.PB-04Q-4760 make Hero Honda Splendor black blue in colour; that one cloth bag (*JHOLA*) of orange colour being hanging on left side handle of the motorcycle, which was suspected to

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contain some intoxicant and it was searched as per law, which resulted in recovery of 23 packets of intoxicant tablets total 2300 tablets. The Investigating Officer separated two packets of 100 tablets each, preparing two sample parcels whereas remaining 21 packets having 2100 tablets were placed in the same *JHOLA* and converted into a parcel; that all the three parcels were sealed and necessary documents were prepared. Accused could not produce any permit or licence for keeping tablets Maidotil, as such they appeared to have committed offence under Section 22 of NDPS Act. The Investigating Officer sent ruqa to police station for registration of the FIR. The sample had been sent to the office of Chemical Examiner, Punjab and as per report received from there, the tablets were found to contain Diphenoxylate hydrochloride and average weight of each tablet being 74 mg i.e. total weight of tablets being 170.2 gms which falls within commercial quantity.

The accused had approached the Court of Judge, Special Court, Faridkot but were unsuccessful there, as such they knocked the door of this Court for grant of regular bail as well as for quashing of FIR.

Notices of the petitions were given to the State and State has put in appearance through counsel opposing the petitions.

As far as petitions for regular bail are concerned, the petitioners – accused are not entitled to grant of bail keeping in view the facts and circumstances of the case including the fact that the quantity of contraband recovered from them amounts to commercial quantity and

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Section 37 (b) of the NDPS Act clearly provides that no person accused of an offence punishable for [offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Bar of Section 37(b)(ii) clearly comes into play since no satisfaction can be recorded that there are reasonable grounds for believing that accused are not guilty of offence under Section 22 of NDPS Act or that they are not likely to commit any offence while on bail. The challan against the accused has been filed and as stated trial is pending against them. In case, they succeed in showing that they are innocent, they would be acquitted, however, no ground for grant of regular bail to them is made out. Therefore, **CRM-M-16332-2016** filed by petitioner - accused - Amandeep Singh @ Amna and **CRM-M-17677-2016** filed by petitioner - accused - Mangal Singh @ Manga are hereby dismissed.

Coming to **CRM-M-11467-2016** filed by petitioners – Mangal Singh @ Manga and Amandeep Singh @ Amna for quashing of abovesaid FIR No.46 dated 11.4.2015 and subsequent proceedings arising out of the same, learned counsel for the petitioners contends that the prosecution story is false and as a matter of fact both the petitioners

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along with one Mandeep Singh @ Vicky went to find the whereabouts of their friends and relative and then the people of village Bir Sikhan Wala caught them on 9.4.2015 at about 2:30 p.m. for snatching chain/purse of one lady and after severe beatings gave them to the police of Sadar, Faridkot on 9.4.2015. The Sadar police of Faridkot police station kept them in their custody and then handed over illegally to the police of City Kotkapura on 11.4.2015 where this false case against them is registered. The person Mandeep Singh who was nabbed along with them was put into another false FIR No.45 on the same date by the same police station. The copy of CD made by one of the villager of the incident along with photographs of the incident is attached as Annexure P-2.

According to the petitioners, a complaint regarding conducting of inquiry was sent to I.G.(Crime), Patiala for taking action against the concerned police officer but no action has been taken so far. The petitioners have been falsely involved in this case. The petitioners are relying upon a few photographs in support of their version and a CD said to be containing the video/photograph of the incident.

Learned State counsel has vehemently opposed these contentions contending that the CD and photographs have been fabricated by the accused to present probable defence and to escape punishment, therefore, no ground is there for quashing of FIR.

After hearing the rival contentions, I find that there is absolutely no ground to allow the petition for quashing the FIR in question. The petitioners are mainly relying upon a few photographs, the

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authenticity and credibility of which is not established. It is difficult to identify the petitioners from such photographs. Similar is the position as regards the CD. Unless it stands proved that the photographs and video are in fact of the incident as per petitioners' version those cannot be relied upon. There is certain procedure to fix the genuineness and credibility of CD and pictures and just by placing such pictures and CD on the file is no guarantee of their genuineness since in this time of digital revolution, it is quite possible to prepare photographs and video films by tampering with the original so as to get the desired results. The FIR in question at this stage cannot be said to be not disclosing any offence or amounting to abuse of process of law. As already observed, the guilt of the accused shall be determined during the trial and their prayer for quashing of FIR for the reasons mentioned, does not seem to have any force and **CRM-M-11467-2016** is dismissed accordingly.

CRM-M-39601 of 2016 &
CRM-M-38490 of 2016

Briefly stated, the facts of the case as per prosecution story are that on 11.4.2015, a police party headed by ASI Gurdeep Singh from Police Station City, Kotkapura was patrolling from City Kotkapura to Beer Road Deviwala; that when the police party reached near Beer Road Culvert over the drain and time was about 11:00 a.m., then from the front side two young men with hair cut riding the motorcycle were spotted coming; that on seeing the police party, they became nervous and tried to turn back the motorcycle, however in the process, they fell down; that they were apprehended on the basis of suspicion; that the

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person driving the motorcycle on being inquired disclosed his name as Mandeep Singh @ Vicky son of Baljeet Singh, Caste Majbi Sikh, resident of Mohalla Jogian, Faridkot, whereas the pillion rider told his name as Lovepreet Singh son of Baljeet Singh, Caste Majbi Sikh, resident of Mohalla Jogian, Faridkot, both real brothers; that when asked about the registration certificate of the motorcycle Hero Honda No.PB-04M(T)-7330, they told that it was newly purchased and its RC had not yet been issued; that the motorcycle was searched as per law and on being open, the tool box was found to contain intoxicant tablets mark Maidotil having 100 tablets in each packet; two packets of 100 tablets each were separated whereas remaining 20 packets were found having 100 tablets each; that the Investigating Officer prepared sealed parcels of two sample and one bulk which were taken into possession; that the motorcycle was also taken into possession. Since the accused could not produce any permit or licence for keeping tablets Maidotil 22 packets total 2200 hundred tablets, as such they appeared to have committed offence under Section 22 of NDPS Act. The Investigating Officer sent ruqa to police station for registration of the FIR and then necessary proceedings were done. The sample had been sent to the office of Chemical Examiner, Punjab and as per report received from there, the tablets were found to contain Diphenoxylate hydrochloride and average weight of each tablet being 73 mg i.e. total weight of tablets being 160.6 gms. which falls within commercial quantity.

The accused Mandeep Singh @ Vicky had approached the Court of Judge, Special Court, Faridkot but was unsuccessful there, as

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such he knocked the door of this Court for grant of regular bail as well as for quashing of FIR.

Notices of the petitions were given to the State and State has put in appearance through counsel opposing the petitions.

As far as petition for regular bail is concerned, the petitioner – accused - Mandeep Singh @ Vicky is not entitled to grant of bail keeping in view the facts and circumstances of the case including the fact that the quantity of contraband recovered from them amounts to commercial quantity and Section 37 (b) clearly provides that no person accused of an offence punishable for [offences under section 19 or section 24 or section 27 A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Bar of Section 37(b)(ii) clearly comes into play since no satisfaction can be recorded that there are reasonable grounds for believing that accused is not guilty of offence under Section 22 of NDPS Act or that he is not likely to commit any offence while on bail. The challan against the accused has been filed and as stated trial is pending against them. In case, he succeed in showing that he is innocent, he would be acquitted, however, no ground for grant of regular bail to him is made out. Therefore, **CRM-M-39601-2016** filed by petitioner -

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accused - Mandeep Singh @ Vicky is hereby dismissed.

Coming to **CRM-M-38490-2016** filed by petitioners – Mandeep Singh @ Vicky and Lovepreet Singh for quashing of abovesaid FIR No.45 dated 11.4.2015 and subsequent proceedings arising out of the same, learned counsel for the petitioners contends that the prosecution story is false and as a matter of fact petitioner Mandeep Singh @ Vicky along with Mangal Singh @ Manga and Amandeep Singh @ Amna went to find the whereabouts of their friends and relative and then the people of village Bir Sikhan Wala caught them on 9.4.2015 at about 2:30 p.m. for snatching chain/purse of one lady and after severe beatings gave them to the police of Sadar, Faridkot on 9.4.2015. The Sadar police of Faridkot police station kept them in their custody and then handed over illegally to the police of City Kotkapura on 11.4.2015 where this false case against them is registered. Petitioner Mandeep Singh who was nabbed put into this false FIR No.45 on the same date by the same police station and the other two accused were put into false FIR No.46 on the same date by the same police station. The video of the incident was made by one of the villager on his mobile and the same was taken into CD. The copy of the CD is part of FIR No.46 which is attached in quashing of FIR No.46. The orer dated 29.9.2016 regarding CD and order dated 18.10.2016 for granting interim bail to accused in FIR 46 and awaiting for the report from the officer regarding CD is attached along with as Annexure P-2 and photographs of the incident showing accused Mandeep Singh @ Vicky along with other accused is attached along with as Annexure P-3.

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According to the petitioners, a complaint regarding conducting of inquiry was sent to I.G.(Crime), Patiala for taking action against the concerned police officer but no action has been taken so far. The petitioners have been falsely involved in this case. The petitioners are relying upon a few photographs in support of their version and a CD said to be containing the video/photograph of the incident.

Learned State counsel has vehemently opposed these contentions contending that the CD and photographs have been fabricated by the accused to present probable defence and to escape punishment, therefore, no ground is there for quashing of FIR.

After hearing the rival contentions, I find that there is absolutely no ground to allow the petition for quashing the FIR in question. The petitioners are mainly relying upon a few photographs, the authenticity and credibility of which is not established. It is difficult to identify the petitioners from such photographs. Similar is the position as regards the CD. Unless it stands proved that the photographs and video are in fact of the incident as per petitioners' version those cannot be relied upon. There is certain procedure to fix the genuineness and credibility of CD and pictures and just by placing such pictures and CD on the file is no guarantee with their genuineness since in this time of digital revolution, it is quite possible to prepare photographs and video films by tampering with the original so as to get the desired results. The FIR in question at this stage cannot be said to be not disclosing any offence or amounting to abuse of process of law. As already observed, the guilt of the accused shall be determined during the trial and their

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prayer for quashing of FIR for the reasons mentioned, does not seem to have any force and **CRM-M-38490-2016** is dismissed accordingly.

9.8.2017
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(H.S.MADAAN)
JUDGE

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