

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

(I) **CRM-M-10919-2019 (O&M)**
Date of Decision:- 4.4.2019

Gurpreet Singh @ Gopi ... Petitioner

Versus

State of Punjab ... Respondent

(II) **CRM-M-52537-2018 (O&M)**

Raj Kumar @ Raju ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Ms. Riffi Birla, Advocate, for the petitioner
(in CRM-M-10919-2019).

Mr. Vivek Kathuria, Advocate, for the petitioner
(in CRM-M-52537-2018).

Ms. Rashmi Attri, AAG, Punjab.

GURVINDER SINGH GILL, J. (Oral)

1. This order shall dispose of above-mentioned two petitions filed on behalf of petitioners Gurpreet Singh @ Gopi and Raj Kumar @ Raju, seeking anticipatory bail in respect of a case registered against them vide FIR No.52, dated 6.8.2018, registered at Police Station Sadar, Abohar, District Fazilka, under Section 15 NDPS Act.
2. The case of prosecution is that on 6.8.2018, when a police party headed by ASI Sajjan Singh was present in the area of Alamgarh on Abohar-Ganga Nagar road, for the purpose of patrolling, then a horse-trailer bearing registration No.PB-05AB-2113 was noticed which was signalled to stop, in which three persons were sitting in the cabin. Although, the driver and the conductor opened the doors and tried to flee but all three of them were apprehended. The driver disclosed his name as Harjinder Singh @ Jinder. The person sitting on the conductor side disclosed his name as Gurpreet Singh and the person sitting in between them disclosed his name as Raj Kumar @ Raju. An offer was extended to the aforesaid three persons in terms of Section 50 of NDPS Act and who opted to be searched in the presence of a Gazetted Officer. Mr. Gurbinder Singh Sangha, Deputy Superintendent of Police, Abohar, was requested to reach at the spot and in his presence a search of the apprehended persons and of the vehicle was effected and 2 plastic bags containing 27.5 kgs each of 'Poppy Husk' were recovered from the seat behind the driver's seat.

3. Learned counsel for the petitioners have submitted that they have falsely been implicated in the present case and that in any case the alleged contraband is marginally above the 'Commercial Quantity' of 50 kgs and three persons have been roped in and since challan has already been filed, therefore, the petitioners deserve the concession of bail more particularly in view of the fact that they are not involved in any other identical case. It has also been submitted that the petitioners cannot be attributed conscious possession of the recovered contraband which was recovered from the seat behind the driver's seat and was not recovered from immediate possession of the petitioners.
4. Opposing both the petitions, learned State counsel, has submitted that since the petitioners are specifically named in the FIR and were arrested at the spot, no case for grant of bail is made out. It has further been submitted that in any case Gurpreet Singh is owner of the horse-trailer bearing registration No. PB-05AB-2113 and as such he cannot feign ignorance about the contraband being carried in his vehicle. It has thus been submitted that the petitioners do not deserve the concession of bail.
5. I have considered rival submissions addressed before this court. As far as the factum of recovery of contraband i.e. 'Poppy Husk' weighing 55 kg is concerned, the same *prima facie* stands established from the fact that recovery has been effected in the presence of a Gazetted Officer apart from other police officials. As far as the

contention of the petitioner-Gurpreet Singh @ Gopi regarding he not being in conscious possession of the contraband is concerned, I find that he being the owner of the vehicle in question cannot feign ignorance and rather is expected to know about the articles loaded in his truck more particularly when he himself is travelling in the cabin of the truck. In these circumstances, no case for grant of bail is made out as far as Gurpreet Singh @ Gopi is concerned.

6. As regards the case of petitioner-Raj Kumar @ Raju, his case is slightly on a different footing inasmuch as he is neither the driver of the truck in question nor owner of the truck in question and was sitting in between the driver and the owner. It will be debatable as to whether he can be said to be having domain over the contraband in question or was aware of the articles being carried in the truck in question so as to attribute conscious possession to him of the contraband recovered. Bearing in mind the aforesaid aspects and also the nature and quantity of the contraband recovered i.e. 'Poppy Husk', which is marginally above 'Commercial Quantity', and also the fact that the petitioner has been behind bars since the last about 8 months, in my opinion, petitioner-Raj Kumar @ Raju can be extended the benefit of bail. Petition bearing No. CRM-M-52537-2018, filed on behalf of Raj Kumar @ Raju, as such, is accepted and he is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned while petition

bearing No.CRM-M-10919-2019 filed on behalf of petitioner-
Gurpreet Singh @ Gopi is dismissed.

6. It is, however, clarified that none of the observations made above
shall be construed to be an expression on merits of the main case.

April 4, 2019
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No