

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 18.11.2019

1. CRM-M-39216-2019 (O&M)

Kanwar Sain

... Petitioner

Vs.

State of Haryana

... Respondent

2. CRM-M-39303-2019 (O&M)

Hukmi Chand @ Madu

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Atun Lakhanpal, Sr. Advocate with
Mr. Arjun Lakhanpal, Advocate
for the petitioner (in CRM-M-39216-2019).

Mr. Abhimanyu Singh, Advocate
for the petitioner (in CRM-M-39303-2019).

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

This order shall dispose of both the aforementioned petitions

praying for grant of regular bail to petitioners Kanwar Sain and Hukmi Chand @ Madu, in FIR No.62 dated 21.05.2017 under Sections 15, 27A, 29, 61, 85 of NDPS Act, registered at Police Station Behal, District Bhiwani.

Learned senior counsel for petitioner Kanwar Sain submits that this is 3rd petition, earlier one was dismissed on 03.04.2018 and thereafter, he has filed second petition, which was disposed of vide order dated 11.12.2018, with a direction to the trial Court to conclude the trial expeditiously within a period of 09 months.

Learned senior counsel for petitioner Kanwar Sain has argued that thereafter, the trial could not proceed, as two co-accused were arrested later on and supplementary challan qua them was presented on 19.07.2019; charges have been framed on 31.10.2019 and therefore, the *de novo* trial has started. Learned senior counsel has placed on record copy of the order dated 16.09.2019 passed by the Additional Sessions Judge, Bhiwani, to support his arguments that the case is again listed for recording the prosecution evidence. It is further argued that as per allegations in the FIR, which was registered on the basis of secret information that Krishan, his wife Roshni, son Jitender, niece Vikash, in conspiracy with her husband i.e. petitioner Kanwar Sain, who is in judicial custody, are indulged in the business of bringing poppy husk from Rajasthan and are coming in a mini truck with large quantity of the contraband. Upon this, the police swung in action and has recovered 1505 kgs chura post (poppy husk) from custody of the aforesaid persons. It is also argued that in fact, name of petitioner has surfaced on the basis of an information given by co-accused Krishan.

Learned senior counsel has further argued that petitioner Kanwar

Sain is in custody since June, 2017 and is not involved in any other case under the NDPS Act and in one FIR, which pertains to the year 2000, he was convicted and has already undergone the entire sentence in 2009 and in between, there is no other case pending against him.

Learned counsel for petitioner Hukmi Chand @ Madu has also argued that this is 5th petition, earlier one was dismissed as withdrawn and in the 4th petition, identical directions were issued by this Court to the trial Court to make an endeavour to conclude the trial within a period of 09 months from the date of the order dated 21.11.2018. It is further argued that name of petitioner Hukmi Chand @ Madu was surfaced, after petitioner Kanwar Sain was arrested and he disclosed his name. It is also submitted that petitioner Hukmi Chand @ Madu is in custody since 20.06.2017 and is not involved in any other case.

Learned State counsel has filed the status report by way of affidavit of Deputy Superintendent of Police, Loharu, District Bhiwani in the Court today and the same is taken on record. As per this affidavit, on disclosure of suspected accused Krishan, six other persons were arrested and challan was presented against five other accused persons namely Krishan Kumar, Kanwar Sain (petitioner), Hukmi Chand @ Madu (petitioner), Anil and Vikram @ Dhillu on 28.11.2017 and after arrest of two more accused persons Rajesh and Manoj, supplementary challan was presented on 19.07.2019 and the charges are re-framed on 31.10.2019 and the case is now fixed for the recording the prosecution evidence on 05.12.2019.

Learned State counsel, on instructions from SI Yashwant Singh, has not disputed the fact that petitioner Kanwar Sain was named by co-accused Krishan and petitioner Hukmi Chand @ Madu was named by petitioner Kanwar

Sain and they were involved in the FIR.

Without commenting anything on merits of the case, considering the fact that both the petitioners are in custody since June, 2017; trial Court has started de-novo trial, as per order of the Additional Sessions Judge, after presentation of the supplementary challan against two other accused persons, who were arrested later on and also in view of the fact that on an earlier occasion, while disposing of the regular bail applications of both the petitioners, a direction was issued to the trial Court to conclude the trial expeditiously within a period of 09 months; a period, which has already lapsed, both these petitions are allowed and petitioners Kanwar Sain and Hukmi Chand @ Madu are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Accordingly, both these petitions are disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

18.11.2019

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No