

CRM-M-41242-2019 (O&M)

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

Decided on: February 27, 2020.

(1)

CRM-M-41242-2019 (O&M).

Jagjit Singh @ Jagga Gill

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

(2)

CRM-M-44675-2019 (O&M).

Jagdeep Singh @ Happy

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

(3)

CRM-M-2885-2020 (O&M).

Talwinder Singh @ Happy

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

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CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.N.S.Sodhi, Advocate, and
Mr.M.S.Toor, Advocate,
for the petitioner in CRM-M-2885-2020.**

**Vivek Lamba, Advocate,
for the petitioner in CRM-M-44675-2019.**

**Mr.Amandeep Singh, Advocate,
for the petitioner in CRM-M-41242-2019.**

Mr.Sarabjit Singh Cheema, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

This order will dispose of the above noted three petitions filed under Section 439 of the Code of Criminal Procedure (for short the 'Cr.P.C.'), seeking regular bail in FIR No.98 dated 23.07.2019, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, (Act No.61 of 1985), (Section 29 of the NDPS Act, added later on), registered at Police Station, Sadar, District Ludhiana.

Learned counsel for the petitioners have, inter alia, argued that in the present case petitioners Jagdeep Singh @ Happy and Talvinder Singh @ Happy are in custody since 23.7.2019, whereas petitioner Jagjit Singh @ Jagga Gill, is in custody since 25.7.2019. It is further submitted that investigation in the present case is complete and challan stands presented and further charges have also been framed on 1.11.2019. It is further submitted that after framing of charges out of 17 witnesses cited by the prosecution, 6 have been given up and the remaining

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are yet to be examined. It is submitted that even as per the contents of the FIR itself, no case against the petitioners is made out. The police party having a secret information came on a private vehicle and in view of the guidelines issued by the Director General of Police, Punjab, it was an error on their part. It is submitted that even the alleged recovery of contraband i.e. 55 grams of intoxicating powder containing diphenoxylate hydrochloride is marginally higher than the commercial quantity i.e. 50 grams. It is submitted that no independent witness has been associated in the present case and the same has been planted against the petitioners because no other case is pending against petitioners Talvinder Singh @ Happy and Jagdeep Singh @ Happy and so far as petitioner Jagjit Singh @ Jagga is concerned, only one other case under the NDPS Act is pending against him. It is submitted that petitioner Jagjit Singh @ Jagga has been nominated in the present case on the basis of disclosure statement made by the co-accused.

Learned State counsel, on instructions from HC Gurjit Singh, has neither disputed the custody period of the petitioners nor the fact that the challan has been presented on 19.10.2019 and charges have been framed on 1.11.2019 and further that out of 17 witnesses cited by the prosecution, 6 witnesses have been given up and the remaining are yet to be examined. However, learned State counsel has opposed the grant of regular bail to the petitioners stating that there is a bar created under Section 37 of the NDPS Act, in case the alleged recovery falls in commercial category.

I have heard the learned counsel for the petitioners as well as learned State counsel and have gone through the paper book.

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It is undisputed that the petitioners Jagdeep Singh @ Happy and Talvinder Singh @ Happy are in custody since 23.7.2019, whereas petitioner Jagjit Singh @ Jagga Gill, is in custody since 25.7.2019 and that challan has been presented on 19.10.2019 and charges have been framed on 1.11.2019 and that out of 17 witnesses cited by the prosecution, 6 witnesses have been given up and the remaining are yet to be examined. No explanation is coming forward as to why the remaining witnesses have not been examined.

So far as the plea taken by the learned State counsel with regard to Section 37 of the NDPS Act, is concerned, the allegedly recovery of 55 grams of intoxicating powder from the petitioners jointly is of commercial quantity but at the same time, it is marginally higher than the commercial quantity as per the schedule of the NDPS Act.

Learned counsel for the petitioners submit that there can also be an error with regard to weighment as on the re-weighment, the weight can be different. He relies upon CRM-M No.26153 of 2013 titled 'Hardeep Singh @ Deepa vs. State of Punjab' decided on 30.09.2013; CRM-M No.30672 of 2019 titled 'Satnam Singh @ Sattu vs. State of Punjab' decided on 17.09.2019; Gurpreet Singh @ Gopi vs. State of Punjab, 2014(14) R.C.R. (Criminal) 327; Shinda vs. State of Punjab, 2013 (3) R.C.R. (Criminal) 557 and Lakhwinder Singh @ Bittu vs. State of Punjab, 2012 (22) R.C.R. (Criminal) 301 to substantiate his arguments.

The provisions of Section 37 of the NDPS Act, although creates a bar for the grant of bail in case of commercial quantity, however,

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the same is not absolute in nature. It is not the case of the State that in case petitioners are released on bail, there is likelihood that they will tamper with the evidence or influence the witnesses or that they may repeat the offence particularly in view of the fact that there is no other case pending against two of the petitioners and only one another case under the NDPS Act is pending against the third petitioner namely Jagjit Singh @ Jagga. The quantity has been allegedly recovered jointly and it is only marginally higher than commercial quantity and allegedly no independent witness was associated and therefore, departure can be made from the bar of Section 37 of the NDPS Act, within its parameters particularly in view of various other judgments of coordinate Bench of this Court stated above where recovered contraband is slightly higher than commercial quantity.

Thus, considering the totality of the circumstances, I deem it fit and appropriate to admit the petitioners on regular bail. Consequently, all the three petitions are allowed. It is ordered that the petitioners shall be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

February 27, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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