

Sr. No.204

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

CRM-M-4591 of 2021 (O&M)

DATE OF DECISION : 04.03.2021

Agar Ali @ Asgar Ali @ Sunny

...Petitioner

Versus

State of Punjab

...Respondent

With

CRM-M-7575 of 2021 (O&M)

Mohd. Aasif

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Mohd. Yousaf, Advocate
For petitioners.

Mr. Amit Mehta, Sr. DAG Punjab.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. Both the above titled bail petitions arise out of FIR No. 165 dated 18.07.2020, registered under Section 15/ 61 of Narcotic Drugs and Psychotropic Substances Act(for brevity, NDPS), Police Station Bhogpur, District Jalandhar. Petitioners/accusedare seeking regular bail.

2. Per FIR, on 18.07.2020, a police party received secret information that present petitioners along with Mohd. Dilshad,Saminder Singh and Mohd. Jamil were indulging in transport of narcotic substance from Jammu and Kashmir. Pursuant thereto, barricades were laid andtwo vehicles i.e. a truck bearing registration No. PB13AB-4637 and car No. HR26K-5711, were intercepted. On recovery of 30 Kgs of poppy husk from car and 80 Kgs

from the truck, respectively, petitioners and co-accused were apprehended/arrested. Petitioners herein were occupants of the car which carried 30 kgs poppy husk.

3. The petitioners are stated to be in custody since 18.07.2020.

4. This is second petition for bail filed by petitioner Asgar Ali, while third on behalf of Mohd. Aasif, having got the earlier petitions dismissed by this court on 18.09.2020.

5. Learned counsel for petitioners submits that neither the petitioners are owners of the truck nor of the car from which the poppy husk was recovered. The petitioners have been falsely implicated in the present case. Nothing was recovered from the conscious possession of the petitioners. They were merely occupants of the car from which alleged recovery of 30 kgs of poppy husk was effected. The alleged recovery falls within non-commercial quantity. The Court below has wrongly invoked the provisions of Section 37 of the Act.

6. He further submits that there has also been violation of mandatory provisions of NDPS Act. The complainant himself is the investigating officer of the case, which is not permissible as per law.

7. Learned counsel for the petitioners further submits that the petitioners are not having any criminal antecedents. They are not involved in any other case.

8. Per contra, learned State counsel opposes the bail plea. He submits that the whole quantity of contraband has to be collectively taken into account. Total quantity being 110 Kgs, falls within commercial quantity. According to him, rigors of Section 37 of NDPS Act would attract to the case of petitioners, which prohibit of grant of bail in case of recovery of commercial quantity.

9. I have heard the rival contentions of the respective learned counsels.

10. The contentions of learned counsel for petitioners, as noted aforesaid, may have substance but same can only be adjudged at the trial. Since investigation is already over and charges have been framed, the case before the trial court is now fixed for prosecution evidence. The trial is not likely to conclude soon in view of the situation arisen due to pandemic.

11. All the prosecution witnesses are police officials. There thus seems no apprehension that petitioners would influence or pressurize the witnesses.

12. It is also a debatable question as to whether the recovery was effected from the conscious possession of the petitioners, who claim to be mere occupants of the car from where 30 Kgs of poppy husk was recovered.

13. Admittedly, petitioners are not involved in any other criminal case of similar nature or even otherwise.

14. Petitioners are no more required for any further custodial interrogation. Trial of the case will take long time in view of delays being caused by current pandemic.

15. Owner of the offending truck has already been enlarged on bail.

16. Considering the overall scenario, without commenting on the merits of the case, these petitions are allowed. I am of the view that no useful purpose would be served to keep the petitioners in further preventive custody.

17. Accordingly, petitioners shall be released on bail on their furnishing bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/ Duty Magistrate, as the case may be.

18. It is, however, made clear that in case the petitioners are found involved in any other case of similar nature while on bail, the prosecution shall be at liberty to seek cancellation of their bail.

(ARUN MONGA)
JUDGE

March 04, 2021
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No