

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 27.10.2021

1. CRM-M-13453-2021 (O&M)

Sohan Singh @ Sohni

... Petitioner

Vs.

State of Haryana

... Respondent

2. CRM-M-23452-2021 (O&M)

Balwinder Singh

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.S. Sekhon, Advocate
for the petitioner (in CRM-M-13453-2021).

Mr. J.S. Dhaliwal, Advocate
for the petitioner (in CRM-M-23452-2021).

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Vide this common order, aforementioned two petitions will be disposed of.

Prayer in CRM-M-13453-2021, which is 2nd petition, is for grant of regular bail to petitioner Sohan Singh @ Sohni in FIR No.104 dated 19.07.2018 under Sections 15/17 of NDPS Act, registered at Police Station Nathu Sarai Chopta, District Sirsa; earlier one was disposed of vide order dated 20.02.2019, granting interim bail awaiting FSL report.

Prayer in CRM-M-23452-2021, which is 4th petition, is for grant of regular bail to petitioner Balwinder Singh in the aforesaid FIR; earlier two were dismissed as withdrawn on 07.09.2018 and 02.11.2018 and third one was disposed of vide order dated 29.01.2019, granting interim bail awaiting FSL report.

Learned counsel for the petitioners submit that the petitioners, after availing the interim bail, have surrendered before the trial Court and as on today, petitioner Sohan Singh @ Sohni is in custody for the last 01 year, 05 months and 12 days and petitioner Balwinder Singh is in custody for the last 01 year, 02 months and 21 days. Learned counsel have relied upon the order dated 18.10.2019 passed in CRM-M-9274-2019, vide which co-accused Zile Singh, who is stated to be owner of the vehicle, was granted the concession of regular bail. The operative part of the order reads as under: -

“...On 08.03.2019, while granting interim bail to the petitioner, following order was passed: -

“Learned counsel for the petitioner submits that as per the allegations in the FIR, registered on a secret information, it

is stated that three persons, namely Sohan Singh @ Sohni s/o Fauja Singh, Balwinder Singh s/o Dharam Singh and Zile Singh s/o Deep Chand (petitioner), are in the business of selling opium and poppy husk and they are bringing the same from Rajasthan on the date of incident i.e. 19.07.2018. It is stated that they are coming in a canter of the petitioner which is containing vegetables and if the same is intercepted, they can be apprehended with narcotic substances. On this, an information was sent to DSP, Ellenabad under Section 42 of the NPDS Act and the present FIR was registered and thereafter, when the Investigating Officer intercepted the said vehicle, he found that the same was driven by Sohan Singh @ Sohni and co-passenger was Balwinder Singh, and the petitioner was not found at the spot. Thereafter, Investigating Officer gave a notice to the aforesaid two persons under Section 50 of the NDPS Act and they gave their consent to be searched before a Gazetted Officer, on which, DSP, Ellenabad reached at the spot. Thereafter, on conducting search of the vehicle, 120 Kgs. of poppy husk and 1 Kg. of opium was recovered.

Learned counsel for the petitioner further submits that thereafter, on the disclosure statement of the co-accused, the petitioner was also arrested and during investigation, the police has obtained four affidavits i.e. one of the original owner of the truck, namely Mangeja Ram, who sold it to Tara Chand. Later on, Tara Chand sold the said vehicle to Jhandu Ram and further on an affidavit, Jhandu Ram has sold it to the present petitioner.

Learned counsel for the petitioner has referred to the affidavits, which are the part of the report submitted under Section 173 Cr.P.C., to argue that in three of the affidavits of Mangeja Ram, Tara Chand and Jhandu Ram, stamp

papers are purchased from a stamp vendor Rajbir Singh against the Sr. Nos. 1510, 1511 and 1512, dated 21.08.2018 but these are attested on 25.08.2018, which raises a suspicion about the validity of these documents.

It is further argued that the affidavit of the petitioner was also sold at Sr. No. 1512 dated 25.08.2018 by the same stamp vendor, however, it was attested on back date on 22.12.2017 by Subhash Chander, Notary Public, Sirsa.

Learned counsel for the petitioner further submits that all the four affidavits were in fact prepared on the same date, just to create evidence that the petitioner has purchased the said vehicle on affidavit.

A perusal of the aforesaid affidavits raises a reasonable suspicion regarding the investigation conducted by the police.

List again on 30.04.2019.

In the meantime, Senior Superintendent of Police, Sirsa is directed to verify the aforesaid facts from the stamp vendor, Notary Public as well as other concerned persons as to whether the stamp papers were purchased subsequently and the affidavits were attested on a previous date and submit his report/affidavit.

Considering the fact that the petitioner is not involved in any other case, he is directed to be released on interim bail till the next date of hearing, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.”

In response to the aforesaid order, affidavit of Senior Superintendent of Police, Sirsa is on record and as per the affidavit, on verification from the Notary Public Subhash Chander, it is found that he has attested the affidavits of 22.12.2016 regarding one Zile Singh, who belongs to his village. It is further

stated in the affidavit that on verification from the Stamp Vendor at Sub Tehsil Office, Sidhmukh, Tehsil Rajgarh, District Churu (Rajasthan), it is found that he has issued the stamp papers at Sr. Nos.1510, 1511 & 1512 dated 21.08.2018, as per the endorsement at page No.123 of register of stamp papers maintained by him and upon verification of the affidavits from the Notary Public at the same place, it has come that the same were attested on 21.08.2018 against the aforesaid three stamp papers.

Learned counsel for the petitioner has thus argued that these affidavits were prepared after registration of the FIR just to involve the petitioner, by posing him as owner of the Tata Canter.”

Learned counsel for the petitioners further submits that the petitioners are first offenders and are not involved in any other case and there are moot points involved to be decided during the trial regarding the manner, in which the investigation was conducted. It is also submitted that out of total 21 prosecution witnesses, none has been examined so far, therefore, conclusion of the trial will take some time.

Learned State counsel has filed the custody certificates dated 26.10.2021 of both the petitioners in the Court today and has submitted that recovery is of 120 kgs of poppy husk and 01 kg of opium, which was effected in presence of a Gazetted Officer, however, it is not disputed that petitioner Sohan Singh @ Sohni is in custody for the last 01 year, 05 months and 12 days and petitioner Balwinder Singh is in custody for the last 01 year, 02 months and 21 days, as per the custody certificates and both of them are not involved in any other case under NDPS Act. It is also not disputed that no prosecution witness has been examined so far.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the aforesaid facts and circumstances of the case, both these petitions are allowed and petitioners Sohan Singh @ Sohni and Balwinder Singh are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petitions are disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

27.10.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No