

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(106+220)

CRM-M-17021-2021 (O&M)
Date of decision:- 31.08.2021

Gurpreet Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ruhani Chadha, Advocate
for the applicant-petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

...

SUVIR SEHGAL, J. (ORAL)

The Court has been convened through video conferencing due to
Covid-19 pandemic.

CRM-25943-2021

For the reasons given in the application, it is allowed.

Order dated 24.02.2020 passed by the Learned Additional
Sessions Judge, Hoshiarpur in FIR No.54/2015 under Section 457, 380 and
411 of the Indian Penal Code, 1860, registered with Police Station Sadar
Hoshiarpur, District Hoshiarpur, is taken on record as Annexure P-8.

CRM-25945-2021

For the reasons given in the application, it is allowed.

Amended petition is taken on record.

CRM-12076-2021

Counsel for the applicant-petitioner submits that the Vakalatnama will be filed in the Registry within a period of one week.

Application is disposed of.

CRM-M-17021-2021

Instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in case FIR No.108 dated 26.05.2020 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), registered at Police Station Bhogpur, District Jalandhar, Annexure P-1.

As per the prosecution case, FIR, Annexure P-1, came to be registered when on a chance inspection of an *Innova* vehicle, both the occupants, the driver as well as the navigator, were found to be in possession of the contraband. Recovery of 3.40 kgs of opium was made from beneath the seat of the driver, Lakhvir Chand, and 2.60 kgs of opium was found to be tied around the waist of Gurpreet Kumar (present petitioner), who was the navigator, and he was arrested on 26.05.2021.

Counsel for the petitioner submits that though the total recovery effected from both the accused is 6.0 kgs of opium, yet by placing reliance upon the judgment of the Hon'ble Supreme Court in ***Amar Singh Ramjibhai Barot versus State of Gujarat (2005) 7 SCC 550***, which has been followed by Co-ordinate Benches of this Court in ***CRM-M-49935-2019 titled as “Dalwinder Singh versus State of Punjab”***, decided on ***08.07.2020*** and ***CRM-M-31646-2018 titled as “Pardeep Kumar @ Pindu***

versus State of Punjab”, decided on 29.10.2018, he contends that recovery effected from the two accused cannot be clubbed together till the time it is not established that there was some conspiracy or complicity between the two accused. He urges that there is a delay of 12 days in sending the recovered contraband to the FSL for examination. It is his argument that the mandatory provisions of the NDPS Act have been violated during the alleged search and seizure of the contraband. He submits that though the petitioner is involved in another criminal case, and has been released on bail vide order dated 24.02.2020, Annexure P-8, but he is not involved in any other NDPS matter. He asserts that the investigation qua the petitioner is complete, challan has been presented, charge has been framed and the petitioner is no longer required for custodial interrogation.

Per contra, learned State counsel, upon instructions from ASI Ram Parkash has opposed the petition and submitted that a huge quantity of opium has been recovered from the petitioner, who was travelling with the co-accused in the same vehicle, so collusion between the two accused is apparent. He submits that as the substance recovered falls within the ambit of commercial quantity, the bar under Section 37 is attracted and the petitioner is not entitled to be released on bail. As per his instructions, challan has been presented on 17.09.2020 and charge has been framed on 04.02.2021, though none out of the nine prosecution witnesses could be examined.

Having considered the rival submissions of the counsel for the parties, this Court is of the view that it would remain debatable as to

whether the petitioner and the co-accused, who were travelling in the same vehicle, were hand in glove with each other and whether the contraband recovered is to be clubbed or they are individually liable. The recovery of 2.60 kgs of opium from the petitioner is marginally above the maximum limit of non-commercial quantity prescribed in the notification issued under the NDPS Act. This Court in ***CRM-M-47446-2019 titled as “Salinder Singh @ Shinda versus State of Punjab”, decided on 28.10.2020*** has ordered the release of the petitioner after taking into account the fact that the recovery effected was marginally above the threshold limit of commercial quantity.

In view of the above facts and circumstances and without commenting upon the merits or de-merits of the arguments raised by the counsel for the parties, the petition is allowed. The petitioner, namely, Gurpreet Kumar, is ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

31.08.2021
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No