

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

CRM-M-17551-2020

Date of Decision:23.12.2021

Jajbir Singh

...Petitioner

Vs.

State of Punjab

....Respondent

2.

CRM-M-20990-2020

Major Singh alias Meju

...Petitioner

Vs.

State of Punjab

....Respondent

3.

CRM-M-26363-2021

Gurdev Singh alias Sonu

...Petitioner

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Gursimran Singh Bhatia, Advocate,
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

Vide these petitions, the petitioner in CRM-M-17551-2020 (Jajbir Singh), seeks the concession of 'anticipatory bail' under the provisions of Section 438 of the Cr.P.C.; and the petitioners in CRM-M-20990-2020 and CRM-M-26363-2021 seek the concession of 'regular bail' under the provisions of Section 439 Cr.P.C., upon FIR No.210, dated 21.10.2019, having

been registered at Police Station Lopoke, District Amritsar Rural, alleging therein the commission of offences punishable under the provisions of Sections 21/24/29 of the NDPS Act, 1985 and Sections 379/411 of the IPC.

CRM-M-17551-2020

As regards the petitioner in this petition, learned counsel for the petitioner submits that petitioner Jajbir Singh having unfortunately passed away, this petition has been rendered infructuous.

Disposed of as such.

**CRM-M-20990-2020 and
CRM-M-26363-2021**

As regards these two petitions filed by Major Singh alias Meju and Gurdev Singh alias Sonu, the contention of learned counsel for the petitioners, as noticed in earlier orders passed also, is to the effect that when the petitioners had no legal pass to cross the border fencing which is guarded by BSF personnel, the question of them having buried any contraband in the fields of any person (stated to be Paramjit Singh, a co-accused), would not arise, with the only time that the petitioners having been across the border fencing, being when the investigating office/other police officials took them, obviously after taking due permission from the BSF.

Upon query to learned State counsel who is assisted by Inspector Vikrant Sharma, the investigating officer, he submits that the petitioners, alongwith the owner of the land where commercial quantity of heroin was found to be buried, i.e. Paramjit Singh, were involved in smuggling such heroin from across the border in collusion with one Ghodar

from Pakistan, with whom they had “Whatsapp” conversations.

Upon further query to learned State counsel as to whether the “Whatsapp” conversations were ever subjected to any analysis by the investigating agency (including the Cyber Crime Cell, Punjab police), he states on instructions that no mobile phone was sent to the cyber cell for any such de-encryption of any “Whatsapp” conversation.

The question that then arises in the mind of the court is as to how the petitioners, who admittedly are not the owners of the field from which the contraband is stated to have been recovered even as per the investigating agency, would have known the exact location in that field when it would seemingly be pointless for the owner of the field to disclose such specific location to them, with them not even able to go across such field unless there was any breach in the barbed wire fencing, which is not even an allegation made even at this stage by the investigating agency.

Thus, looking at the aforesaid facts as also the period of the custody (2 years) of the petitioners, with the trial still to effectively commence even as per instructions of learned State counsel, and with there being no other criminal case registered against them, these two petitions are allowed with the petitioners ordered to be admitted to bail, upon him furnishing adequate bail and surety bonds to the satisfaction of the trial court.

It is made absolutely clear that all observations made in any order passed by this court in these petitions, are wholly in the context of petitions filed seeking that the petitioners therein be admitted to bail. As

regards the trial itself, naturally the trial court would proceed wholly on the basis of evidence led before it.

It is to be further observed that the petitioners are being admitted to bail by this court exercising jurisdiction under Section 37(1)(b))(ii) of the NDPS Act, 1985, looking at the fact that the possibility of the offence not having been committed by them is rather large in the opinion of this court, in the aforesaid circumstances, (though with it to be repeated that the said observation is again in the context of the present petitions only).

December 23 2021

dharamvir//

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned	: YES
Whether Reportable	: NO