

CRM-M-37757-2020 (O&M)&
CRM-M-41620-2020(O&M)

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

(1)

CRM-M-37757-2020(O&M)

Darshan

...Petitioner

Versus

State of Haryana

...Respondent

(2)

CRM-M-41620-2020(O&M)

Amrik Ram

...Petitioner

Versus

State of Haryana

...Respondent

Date of decision:-17.8.2021

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: S/Sh.PKS Phoolka & Kartar Singh, Advocates
for the petitioner in CRM-M-37757-2020.

Sh.Ajay Arora, Advocate
for the petitioner in CRM-M-41620-2020.

Sh.Sharad Aggarwal, AAG, Haryana.

H.S. MADAAN, J.

Cases taken up through video conferencing.

By this order, I shall dispose of two petitions i.e. CRM-M-37757-2020 filed by petitioner – accused – Darshan and CRM-M-41620-2020 filed by petitioner - accused – Amrik Ram, for grant of regular bail in case FIR No.7 dated 22.1.2020, under Section 22-C of NDPS Act, registered with Police Station Sirsa Rori. These are the second petitions filed on behalf of both the petitioner/accused.

Briefly stated, the facts of the case, as per prosecution story are that on 22.1.2020, a police party while being present in the area of canal bridge of village Rori, District Sirsa in connection with patrolling had apprehended accused Darshan and found him in possession of 1600 Tramadol Hydrochloride Tablets 100 mg., Batch No.TDP 19022, MFG. DATE AUG-2019 and EXP. DATE JUL.2022. Formal FIR in the matter was registered. The recovered contraband was taken into police possession. During the course of investigation, accused Darshan was interrogated and he disclosed that he had procured the recovered tablets from Amrik Ram, as such Amrik Ram was nominated in this case. He was also arrested on 11.2.2020. Both the petitioners/accused had approached the Court of Sessions at Sirsa by moving applications for regular bail but the same were dismissed by learned Additional Sessions Judge, Sirsa.

As such, the petitioners have approached this Court for the same relief, which they could not get while knocking at the door of this Court for the first time. Thereafter, they have approached this Court again

by way of filing of the present petitions, craving for the similar relief.

Notice of the petitions was given to respondent – State and counsel representing the State has put in appearance.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the petitioner Darshan has contended that the recovery has not been effected from the petitioner by complying with all the necessary legal provisions; that the petitioner Darshan is behind bars for about 1 year and 6 months; the trial is not showing any progress on account of outbreak of Covid-19 pandemic, therefore petitioner Darshan be granted concession of regular bail.

Whereas learned counsel appearing for the petitioner Amrik Ram has contended that no recovery has been effected from him and he has been named in this case in disclosure statement of co-accused Darshan, which is inadmissible in evidence; that the petitioner is behind bars since long with conclusion of the trial being not in sight on account of the proceedings being held up and he be also granted concession of regular bail.

Learned State counsel has vehemently opposed both the petitions contending that the recovery involved in this case amounts to commercial quantity and on account of bar of Section 37 of NDPS Act concession of bail cannot be granted to the petitioners; petitioner/accused Darhsan had been apprehended by the police and found in possession of contraband, whereas petitioner/accused Amrik Ram is supplier of the recovered contraband, as such both the petitions be dismissed.

After hearing the rival contentions and going through the record, I find that both the petitions are doomed for failure. The recovery involved in this case amounts to commercial quantity attracting bar of Section 37 of NDPS Act, which reads as under:

Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

In the present case, I do not see any reason to record requisite satisfaction that there are reasonable grounds for believing that the petitioners are not guilty of such offence and that they are not likely to commit any offence while on bail.

As regards the submission of learned counsel for the petitioner Darshan that the mandatory provisions of law were not

complied with while arresting him and effecting recovery from him, such submission touching merits of the case is not of much significance at this stage, though it may be relevant at the time of trial. The factors, which are to be considered for grant of regular bail are quite distinct and different from the factors, which are to be taken into view while determining the criminal liability of an accused in the trial. For grant of regular bail, the factors to be considered are quite different, which include like age and previous antecedents of the accused, the conduct of the accused, likelihood of accused appearing in the Court regularly or absconding, the chances of influencing the prosecution witnesses, the stage of the trial etc. Whereas for determining guilt of the accused during trial it is to be seen as to whether the prosecution has been able to prove guilt of the accused beyond a shadow of reasonable doubt. For that the prosecution evidence is to be scanned and analyzed and pleas taken by accused and defence evidence if any are also to be considered.

As regards petitioner Darshan being behind bars for about 1 year and 6 months, it is to be noticed that functioning of the Courts has been adversely affected on account of outbreak of Covid-19 for about one and a half years and the prosecution cannot be blamed for prolonging the trial. Similarly the trial is also not at fault for the proceedings in the trial getting stretched for a long time.

With regard to petitioner/accused Amrik Ram, his name cropped up as supplier of the contraband during the disclosure statement of co-accused Darshan, which can certainly be taken into consideration for providing lead in the investigation.

Section 30 of the Indian Evidence Act provides that when more person than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. Therefore, such statement can certainly be taken into consideration.

The drug trafficking is rising at an alarming rate in this region, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increase drug trafficking.

The apprehension expressed by the State counsel that if petitioners are granted bail, there is every likelihood to their absconding and even tampering with the prosecution evidence cannot be brushed aside lightly.

Therefore, finding no merit in the petitions, the same stand dismissed.

17.8.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No