

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

- (1)

CRM-M-40971-2020 (O&M)

Khan @ Mohd. Khan

...Petitioner

Versus

State of Punjab

...Respondent
- (2)

CRM-M-1556-2021 (O&M)

Lal Hussain

...Petitioner

Versus

State of Punjab

...Respondent
- (3)

CRM-M-1615-2021 (O&M)

Yaqoob

...Petitioner

Versus

State of Punjab

...Respondent
- (4)

CRM-M-477-2021 (O&M)

Saif Ali Khan

...Petitioner

Versus

State of Punjab

...Respondent
- (5)

CRM-M-5186-2021 (O&M)

Shabir Khan

...Petitioner

Versus

State of Punjab

...Respondent

(6)

CRM-M-12302-2021 (O&M)

Mohd. Khalid

...Petitioner

Versus

State of Punjab

...Respondent

Date of decision: 23.04.2021

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

Present: Mr. M.K. Dhot, Advocate for the petitioner
in CRM-M-40971-2020.

Mr. Mohit Kumar, Advocate for
Mr. G.S. Sidhu, Advocate for the petitioner
in CRM-M-1556, 477 and 1615-2021.

Mohd. Yousaf, Advocate for the petitioner
in CRM-M-5186 and 12302-2021.

Mr. J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

By this order, the aforementioned petitions are decided
being arising out of the same FIR. Petitioners Khan @ Mohd. Khan,
Lal Hussain, Yaqoob and Saif Ali Khan have filed petitions for grant of
anticipatory bail, whereas, petitioners Shabir Khan and Mohd. Khalid

have preferred petitions for grant of regular bail in FIR No.114 dated 15.10.2020, for offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act'), registered with Police Station Sandaur, District Sangrur.

Briefly stated the facts of the case as per prosecution story are that the police had received a secret information that Yakoob resident of Nabha road Malkerkotla and Khan resident of Hathoi in connivance with each other bring poppy husk in huge quantity from Srinagar in Essar Canter off Yaqoob and then the said contraband is supplied by Shabir Khan, Lal Hussain, Saif Ali sons of Ismail Khan, resident of Kuthala, Mohd. Khalid son of Mohd. Yaqoob resident of Bhogiwal, Rafiq son of Ibrahim; that on the fateful day i.e. on 15.10.2020, Shabir Khan and Mohd. Khalid were bringing contraband in vehicle Chota Hathi bearing No.PB10-CE-8664 going from Village Kuthala to Village Khurd for supplying the poppy husk and if a naka was laid, they could be caught; it was so done; during the course of which Shabir Khan and Mohd. Khalid were apprehended and 100 kgs of poppy husk was recovered from them; during the course of interrogation of both these accused, Rafiq son of Umardin was also nominated; on 17.10.2020, Bagh Hussain @ Bhau resident of Sanghain and Rafiq were arrested and 25 kgs of poppy husk was recovered.

Khan @ Mohd. Khan had filed an application for grant of anticipatory bail before Judge, Special Court, Sangrur, which was, however, dismissed, vide order dated 20.11.2020, whereas, petitioner

Lal Hussain and Saif Ali Khan had also filed separate applications for grant of pre-arrest bail, which were dismissed on 22.12.2020, whereas, the application filed by petitioner Yaqoob seeking anticipatory bail, was dismissed on 23.12.2020. Whereas, the petitions filed by petitioners Shabir Khan and Mohd. Khalid for grant of regular bail were dismissed on 18.01.2021 and 28.01.2021 respectively by Judge, Special Court, Sangrur.

Feeling aggrieved, they have approached this Court, craving for grant of similar relief to them, which they claimed from Judge, Special Court, Sangrur. Notices of the petitions was given to the State, which has put in appearance through State counsel.

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

Firstly taking the petitions for pre-arrest bail filed on behalf of petitioners Khan @ Mohd. Khan, Lal Hussain, Yaqoob and Saif Ali Khan, they have been granted interim bail by a Co-ordinate Bench with a direction to join investigation and they are said to have done so and released on interim bail. This fact is conceded by the State counsel, who on instructions from SI Sarabjit Singh has stated that no recovery is to be effected from petitioners Khan @ Mohd. Khan, Lal Hussain, Yaqoob and Saif Ali Khan, therefore, their custodial interrogation is not required. Even otherwise, in the FIR, there are no clear and specific allegations against the present petitioners, as such, petitions No.CRM-M-40971-2020 and CRM-M-1556, 1615 and 477-

2021 filed by petitioners Khan @ Mohd. Khan, Lal Hussain, Yaqoob and Saif Ali Khan respectively are accepted. The interim bail granted to the petitioner Khan @ Mohd. Khan and Saif Ali Khan, vide orders dated 22.12.2020 and 08.01.2021 respectively and to petitioners Yaqoob and Lal Hussain, vide order dated 13.01.2021, is made absolute, subject to the following conditions:-

- (i) that the petitioners shall appear in the Court on each and every date of hearing;
- (ii) they shall not give any threat or intimidation to the prosecution witnesses;
- (iii) they shall not indulge in any criminal activity;
- (iv) they shall not leave India without prior permission of the Court and shall surrender their passports, if they have got one, otherwise to furnish affidavits in that regard;

In case, the petitioners violate any terms & conditions, on which the bail has been granted to them, the prosecution would be entitled to apply for cancellation of bail.

With regard to petitions for regular bail filed on behalf of Shabir Khan and Mohd. Khalid, as per prosecution story, they were found in possession of 100 kgs of poppy husk, which amounts to commercial quantity, attracting bar of Section 37 of the Act, which provides that every offence punishable under the Act shall be cognizable and no person accused of an offence involving commercial quantity etc., shall be released on bail, if the petition is opposed by the Public Prosecutor, unless, the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such

offence and he is not likely to commit any offence while on bail. Since both the petitioners are specifically named in the FIR and recovery had been effected from them at the spot, I do not see any reason to record satisfaction required by this provision.

Although, learned counsel for the petitioners has tried to build an argument that petitioners were not apprehended by the police on the date and time and in the manner as alleged and has referred to some photographs and CCTV footage in that regard but I find that photographs do not tell the complete story. It is difficult to arrive at any specific conclusion with regard to identity of the vehicles shown therein. The genuineness of these photographs and CCTV footage is also required to be verified for which necessary evidence is required, which is within domain of the trial Court. The trial Court during trial would come to definite conclusion whether the prosecution story is truthful or the defence version creates a serious dent therein. However, at this stage, I do not see any reason to disbelieve the prosecution story. The challan against the accused has been filed and the trial is likely to be concluded in near future. The guilt of the accused shall be determined during the trial. As such, I do not see any reason to grant benefit of regular bail to petitioners Shabir Khan and Mohd. Khalid. The petitions No.CRM-M-5186 and 12302-2021 so filed by them stand dismissed accordingly.

23.04.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No