

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

(1) **CRM-M-776-2022 (O&M)**

Prince ...Petitioner

Versus

State of Punjab ...Respondent

(2) **CRM-M-1933-2022 (O&M)**

Dileep Kumar ...Petitioner

Versus

State of Punjab ...Respondent

(3) **CRM-M-1123-2022 (O&M)**

Sunil Kumar ...Petitioner

Versus

State of Punjab ...Respondent

(4) **CRM-M-14025-2022 (O&M)**

Sudhir Kumar ...Petitioner

Versus

State of Punjab ...Respondent

Date of Decision:- 18.10.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Yashpal Thakur, Advocate for the petitioner(s)
in CRM-M-776-2022, CRM-M-1933-2022 and
CRM-M-1123-2022.

Mr. Sanjiv Gupta, Advocate for the petitioner
in CRM-M-14025-2022.

Mr. Siddharth Attri, AAG, Punjab,
assisted by ASI Maan Singh.

GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned four petitions filed on behalf of Prince, Dileep Kumar, Sunil Kumar and Sudhir Kumar seeking grant of regular bail in a case registered against them vide FIR No. 119 dated 9.10.2021 under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Mulepur, District Fatehgarh Sahib.
2. The case of the prosecution, in nutshell, is that on 9.10.2021 at about 12.30 p.m. when a police party was patrolling in the area of Bus Stop Village Jakhowali, then a secret information was received to the effect that Sudhir Kumar indulges in sale of intoxicant tablets, capsules and injections and supplies contraband in village Mulepur and Mohra Mohare. The information was further to the effect that even on the given day said Sudhir Kumar was proceeding from Rajpura towards village Mulepur and Mora Mori in a vehicle bearing registration No. DL-9CAS-1399, so as to supply intoxicants.
3. Pursuant to receipt of said information barricades were laid. The police was able to intercept the aforesaid car driven by Sudhir Kumar. The search of the car led to recovery of 240 bottles of Corex (100 ML) and 1000 intoxicant capsules containing 'Tramadol'. It is further the case of prosecution that during the course of interrogation, the petitioner disclosed the names of Prince, Dileep Kumar and Sunil Kumar and from whose possession also huge quantity of contraband was recovered.

4. The learned counsel representing the petitioner Sudhir Kumar has submitted that he is a licensed Chemist and as such recovery of medicines from him, even if admitted for the sake of arguments, would not attract any offence under the NDPS Act. The learned counsel in order to hammer forth his aforesaid submission has referred to the licence, valid from 28.3.2019 to 27.3.2024, in the shape of FORM-21 (Annexure P-2). The learned counsel representing the petitioner Sudhir Kumar has further submitted that he had infact been picked up by the police on 8th October, 2021 and was later involved in the present FIR on the next day.
5. The learned counsel representing the other three petitioners namely Prince, Dileep Kumar and Sunil Kumar has submitted that they all have been falsely implicated on the basis of disclosure statement made by the co-accused Sudhir Kumar which cannot be said to be admissible evidence and as such, the petitioners deserve the concession of regular bail. It has further been submitted that all the three petitioners had been picked up by the police and were missing from their homes in respect of which their relatives lodged separate 'missing' reports with the police.
6. Opposing the petitions, the learned State counsel has submitted that it is a case where the accused were into drug trafficking in a large scale. It has been submitted that petitioner Sudhir Kumar cannot be said to be authorized to possess or sale 'Tramadol' on the basis of the licence in question, which authorized him for possessing or selling drugs falling in "Schedule-C and C-1" only. It has further been submitted that even as per the said licence, the petitioner can possess or sell such drugs only at the premises specifically

specified in the licence and he is not expected to go about carrying the drugs in his car at all places.

7. The learned State counsel has further submitted that the co-accused namely Prince, Dileep Kumar and Sunil Kumar, though nominated on the basis of disclosure statement of co-accused Sudhir Kumar, led to recovery of intoxicating tablets/syrup for which they could not furnish any authorization and as such, their complicity is clearly evident. It has further been submitted that the missing reports lodged by the petitioners is an afterthought and an attempt to build up false defence.
8. This Court has considered rival submissions addressed before this Court.
9. As far as the case of petitioner Sudhir Kumar is concerned, though he does seem to have a valid licence to possess, distribute or sell some drugs but the said licence (Annexure P-2) authorizes him to deal with drugs specified in “Schedule-C and C-1” only whereas Tramadol is a drug falling in Schedule-H. In these circumstances, the petitioner Sudhir Kumar cannot claim any benefit on the strength of the licence (Annexure P-2). His possession of the drugs which do not fall in Schedule-C and C-1 was apparently for the purpose of their misuse. Further, the circumstances under which the said drugs were recovered clearly points out towards his complicity. The ‘missing’ report lodged by his family will not help the petitioner inasmuch as the same was lodged on the very day when he was apprehended by the police.

10. As far as the remaining three petitioners namely Prince, Dileep Kumar and Sunil Kumar are concerned, it is no doubt correct that they were initially nominated on the basis of disclosure statement but their complicity is established from the fact that they led to recovery of contraband. While petitioner Prince got recovered 3210 strips of intoxicant capsules, 40 bottles of Corex (100 ml), 60 strips of intoxicant capsules-480 capsules; the petitioner Dileep Kumar got recovered 480 bottles of intoxicant syrups and the petitioner Sunil Kumar got recovered 3210 strips of intoxicating capsules-total 25,680 capsules and 40 intoxicating syrup. Though, the learned counsel referred to the missing reports lodged by their relatives but the said reports will not be of much avail to the petitioners as the same were lodged on the very day when they were arrested in the present case.
11. The aforesaid facts and circumstances shows that the petitioners were jointly into drug trafficking and since it is a case of recovery of 'commercial quantity' of contraband, the fetters imposed under Section 37 of the NDPS Act will come into play in the matter of grant of bail.
12. There is nothing on record to suggest that the petitioners have been falsely implicated. Hon'ble Apex Court in a judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under the NDPS Act is uncalled for.
13. Hon'ble Supreme Court in a very recent judgment Narcotics Control Bureau vs. Mohit Aggarwal, 2022(3) RCR(Criminal) 985, while deciding an appeal

filed by Narcotics Control Bureau challenging grant of bail to an accused by the High Court, cancelled the bail while reiterating the view that provisions of Section 37 of the Act have to be strictly complied with and that mere length of custody cannot be a consideration for grant of bail. Paras 14 and 18 of the said judgment read as follows :-

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. xxx xxx xxx

16. xxx xxx xxx

17. xxx xxx xxx

18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. **The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”**

(emphasis supplied)

14. There is nothing on record to suggest that the petitioners have been falsely implicated or that in case released on bail, they will not commit identical offences again. As such, no case for grant of regular bail is made out to either of the petitioners.

- 15. All the petitions, as such, are dismissed.
- 16. A photocopy of this order be placed on the file of connected cases.

18.10.2022

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(Gurvinder Singh Gill)
Judge

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