

CRM-M-5520-2022 (O&M)

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

Decided on: July 19, 2022.

(1) CRM-M-5520-2022 (O&M).

Chhotu Sharma

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

(2) CRM-M-5566-2022 (O&M).

Dalip Bharti

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

*** * ***

**PRESENT Ms.Puja Chopra, Advocate,
for the petitioner in both the petitions.**

Ms.Samina Dhir, DAG, Punjab.

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KARAMJIT SINGH, J. (ORAL)

This order will dispose of the above noted two petitions i.e. CRM-M-5520-2022 filed by petitioner Chhotu Sharma and CRM-M-5566-2022 filed by petitioner Dalip Bharti, under Section 439 Cr.P.C. for grant for regular bail to the petitioner in both petitions in case FIR No.115 dated 1.7.2021, under Sections 18 (C)/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sangat, District Bathinda.

Counsel for the petitioners submits that both the petitioners have been falsely implicated in this case and as per the allegations in the FIR 5 Kgs of opium was recovered from kit bag. Counsel for the petitioner further submits that said kit bag was not belonging to the petitioners.

Counsel for the petitioners further submits that during trial recovery witness namely PW.2 ASI Darshan Singh clarified in his testimony that the said kit bag was lying in the lap of co-accused Manoj Kumar who was searching something from the said bag.

Counsel for the petitioners further submits that petitioners cannot be made liable for the recovery, if any, made from co-accused Manoj Kumar who was carrying the aforesaid kit bag.

Counsel for the petitioners further contends that petitioners and co-accused Manoj Kumar are not belonging to the same village. Counsel further contends that both the petitioners are in custody for the last more than one year and it will take time for the trial to conclude.

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Counsel for the petitioner further made prayer that as nothing was recovered from the possession of the petitioners, they are entitled to grant of bail.

Both the petitions are resisted by the State counsel who submits that as per the allegations in the FIR and the report submitted under Section 173 Cr.P.C., it can be easily made out that aforesaid kit bag was found from the possession of both the petitioners and Manoj Kumar and on checking, the said kit bag was found to be containing 5 kgs of opium. The State counsel further submits that trial is going on and as such, no ground is made out to grant bail to the petitioners. However, the State counsel has not disputed the custody period of both the petitioners as has been stated by the counsel for the petitioners.

I have considered the submissions made by the learned counsel for the parties.

The FIR in the present case was registered alleging that 5 kgs of opium carried in a kit bag was recovered from the petitioners and one Manoj Kumar by the police on 1.7.2021.

Admittedly, both the petitioners are in custody for the last more than 1 year as is evident from the custody certificates furnished by the State counsel. As per the custody certificates, the petitioners are not involved in any other case.

Counsel for the petitioners placed on record copy of the testimony of PW.1 SI Major Singh and PW.2 ASI Darshan Singh. PW.2 ASI Darshan Singh, who at the first instance apprehended the petitioners and

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Manoj Kumar, has clarified in his testimony that when he saw accused persons, contraband was lying in the lap of accused Manoj Kumar who was searching the bag. He further deposed that he recovered opium from Manoj Kumar.

In view of aforesaid admissions made by PW.2 ASI Darshan Singh, no purpose is going to be served by keeping the petitioners in custody for any longer period as it will take time for the trial to conclude. Accordingly, without commenting on the merits of the case, the present both petitions are allowed and the petitioners are hereby ordered to be released on regular bail subject to furnishing bail and surety bonds to the satisfaction of the CJM/Duty Magistrate concerned during the pendency of the trial.

A copy of the order be placed on the file of connected case.

July 19, 2022.
raj arora

(KARAMJIT SINGH)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No