

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

286(2)

1. CRM-M-24575 of 2021
Date of decision:13.07.2022

Angrej Singh @ Sethi

... Petitioner

Vs.

State of Punjab

... Respondent

2. CRM-M-31546 of 2021

Hira Singh @ Heera

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. D.S.Pheruman, Advocate
for the petitioner in CRM-M-24575 of 2021.

Mr. D.S.Pheruman, Advocate for
Mr. Amardeep Singh, Advocate
for the petitioner in CRM-M-31546 of 2021.

Mr. Prabhjot Singh Walia, AAG, Punjab.

SUVIR SEHGAL, J. (Oral)

This order will dispose of two petitions bearing Nos.CRM-M-24575 of 2021 and CRM-M-31546 of 2021 as both the petitions arise out of FIR No.42 dated 06.03.2020 for offences under Sections 15 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), lodged at Police Station Sarhali, District Tarn Taran

(Annexure P-1).

Both accused-petitioners, have approached this Court by way of separate petitions seeking grant of regular bail under Section 439 Cr.P.C. Accused-Angrej Singh is approaching this Court for the third time, and accused-Hira Singh for the second time.

Case of the prosecution is that FIR, (Annexure P-1), has been registered after a jeep on which the accused were travelling, was signaled to stop, but instead, jeep driver accelerated the vehicle and tried to flee from the spot. Upon being apprehended, the driver and co-passenger of the jeep disclosed their names as Angrej Singh (petitioner in CRM-M-24575 of 2021) and Hira Singh (petitioner in CRM-M-31546 of 2021). On searching the vehicle, two bags weighing 80 kgs in total, were recovered which contained poppy husk.

Counsel representing the petitioner urges that although as per the case of the prosecution, 80 kg poppy husk, has been recovered, but examination of the allegation in the FIR and affidavit dated 16.05.2022 filed by the State shows that the bags were being carried by the accused separately. He submits that a bag weighing 41 kgs has been recovered from accused-Angrej Singh and recovery of second bag weighing 39 kgs has been effected from accused-Hira Singh. He has placed reliance upon the judgment of Supreme Court in **Amar Singh Ramjibhai Barot Vs. State of Gujarat (2005) 7 SCC 550** as also judgments of this Court in CRM-M-49935 of 2019 titled as '**Dalwinder Singh Vs. State of Punjab**' decided on 08.07.2020; CRM-M-31646 of 2018 titled as '**Pardeep Kumar @**

Pindu Vs. State of Punjab', decided on 29.10.2018 and CRM-M-26597 of 2021 titled as 'Balwinder Singh @ Happy Vs. State of Punjab', decided on 12.08.2021 to urge that recovery effected from the petitioners cannot be clubbed till the time it is not established that there was some complicity or conspiracy between the two accused. It has been argued by him that mandatory provisions of the NDPS Act were not complied with at the time of search and seizure. Still further, counsel submits that earlier petitions filed by the petitioners were withdrawn after arguments and no order was passed on merits. Counsel asserts that petitioners, who have been in custody since 06.03.2020 and enjoy clean past, deserve to be enlarged on bail due to the tardy progress of the trial.

Opposing the petitions, on the basis of instructions received from ASI Baldev Raj and by referring to the affidavit of Superintendent of Police, Tarn Taran, District Tarn Taran, State counsel submits that as the quantity recovered is commercial, rigor of Section 37 of the NDPS Act, is attracted. He submits that challan has been presented on 28.08.2020, charge has been framed on 03.03.2021 and 08 out of total 17 prosecution witnesses, have been examined.

Having heard counsel for the parties, this Court is *prima facie* of the view that it would remain debatable as to whether the petitioners, who are travelling in the same vehicle, were hand in glove with each other and as to whether the recovery effected from them is to be clubbed or they are individually liable for the same. If recovery effected from the petitioners

is seen individually, the same falls in the category of intermediate quantity as per the notification issued under the NDPS Act. The above facts coupled with the long incarceration of the petitioners which by now is more than 03 years and 04 months, would entitle the petitioners to be released on bail as there is no possibility of an immediate conclusion of the trial.

Without delving into the merits or demerits of the arguments addressed by counsel for the parties, the petitions are allowed and the petitioners are ordered to be released on bail on their furnishing **heavy bail/surety bonds** to the satisfaction of the Trial Court/Duty Magistrate concerned.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 13, 2022
savita

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>