

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

225/2

CRM-M- 27295 of 2022

Date of Decision: 09.11.2022

Ram Singh

....Petitioner

Versus

State of Punjab

.....Respondent

2)

CRM-M-41495 of 2022

Gurpreet Singh

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Lupil Gupta, Advocate,
for the petitioner in CRM-M-27295 of 2022.
Mr. Sanjeev Kumar, Advocate,
for the petitioner in CRM-M-41495 of 2022.
Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

Both the cases are taken up together for final disposal with the consent of learned counsel for the parties as the same arise out of the same FIR.

The learned counsel appearing on behalf of the petitioner (in CRM-M-27295 of 2022) has submitted that both the petitioners are in custody from the last nine months and 12 days and the investigation of the case has been completed and thereafter the report under Section 173 of the Code of Criminal Procedure has been presented to the Special Court and now charges have been framed. The learned counsel appearing on behalf of the petitioner (in CRM-M-41495 of 2022) has

submitted that the petitioner is in custody from 28.01.2022 and he may be considered for the grant of regular bail.

They submitted that even as per the allegations contained in the FIR itself, there was one bag which was transparent and having open mouth which was lying at a place of the shed of a bus-stand which is a public place and allegedly both the petitioners were sitting on the side of the bag. It has been so stated in the FIR and it is the prosecution story that the bag was found in the middle of both the petitioners and on getting suspicious the concerned appropriate officer was called who gave an offer under Section 50 of the NDPS Act but both the petitioners allegedly consented to get themselves searched from the aforesaid officer and from the bag there was an alleged recovery of 12 vials of Omerex (each of 100 ML) and 120 tablets of Carisoma. So far as the 120 tablets of Carisoma are concerned, the same do not fall within the parameters of NDPS Act. The learned counsels strongly submitted that on the face of it, the FIR was a false and fabricated one and the mere fact that the passengers who were to take a bus and were sitting in the shed of the bus-stand and mere fact that one bag was found on the seat in the middle of the two persons would not mean that there was any conscious possession of both the petitioners. They further submitted that in view of the aforesaid position, the bar contained under Section 37 of the NDPS Act will not apply in the present case. The learned counsel appearing on behalf of the petitioner (in CRM-M-41495 of 2022) has submitted that although the petitioner is involved in two more cases but in fact it was only because of the pendency of aforesaid cases that he has been falsely implicated in the present case. The learned counsel appearing on behalf of the petitioner (in CRM-M-27295 of 2022) has submitted that the petitioner has

clean antecedents and is not involved in any other case.

Mr. Kunal Vinayak, learned AAG, Punjab on the other hand has submitted that it is correct that the bag was found lying in between the two persons on a seat in a shed of a bus-stand which is a public place and it is also correct that the investigation of the case has been completed and the charges have now been framed and so far as the petitioner Ram Singh is concerned, he is not involved in any other case. He has however opposed the grant of bail on the ground that the confiscated quantity is commercial quantity under the NDPS Act and therefore the bar contained under Section 37 of the NDPS Act will apply in the present case.

I have heard the learned counsels for the parties.

As per the prosecution story itself, the recovery was from the seat under the shed of a bus-stand which is a public place and both the petitioners were not in the possession of the plastic bag but were sitting on the side of the bag. Both the petitioners have already faced incarceration for more than nine months and the trial Court has already framed charges. Although notice under Section 50 of the NDPS Act was given but as per the prosecution, both the petitioners had given consent for getting searched from the concerned appropriate police officer. The place as per the learned counsels for the parties was a public place which was a bus-stop and the packet containing 1200 ML of Omerex which is slightly higher than the commercial quantity as per the NDPS Act was on the seat/bench and even as per the prosecution, both the petitioners were only sitting on both the sides and the recovery was not made from the petitioners but from the bench/seat. Therefore this Court is of the view that it is not a case of recovery from conscious possession of the accused persons. This Court would not go into the merits of the case but only for the purpose of considering bail, this Court will have to consider the effect

of Section 37 of the NDPS Act.

Considering the bar contained under Section 37 of the NDPS Act, the facts and circumstances of the present case suggest that there are *prima facie* reasons to believe at least at this stage that the petitioners are not guilty of the offence. So far as the second ingredient for making a departure from the provisions of the NDPS Act is concerned, the petitioner Ram Singh is stated to be not involved in any other case and so far as the other petitioner namely Gurpreet Singh is concerned, he is involved in two more cases, but it is not the case of the State counsel that in case the petitioners are released on bail, then they may repeat the offence or may abscond from justice. Therefore, both the conditions for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid position, both the petitions are allowed. The petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of these two petitions.

(JASGURPREET SINGH PURI)
JUDGE

November 09, 2022
dinesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No