

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 12.01.2022

1. CRM-M-34142-2021 (O&M)

Amit Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

2. CRM-M-34831-2021 (O&M)

Yusuf Khan

... Petitioner

Vs.

State of Haryana

... Respondent

3. CRM-M-39243-2021 (O&M)

Rakesh @ Gidama

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.S. Virk, Advocate
for the petitioner (in CRM-M-34142-2021).

Mr. Aditya Sanghi, Advocate
for the petitioner (in CRM-M-34831-2021).

Mr. M.S. Dalal, Advocate
for the petitioner (in CRM-M-39243-2021).

Mr. Deepak Grewal, DAG, Haryana

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in these three petitions is for grant of regular bail to petitioners Amit Kumar, Yusuf Khan and Rakesh @ Gidama, in FIR No.69 dated 26.05.2020 under Section 15 of NDPS Act and Sections 15(c), 29, 27-A, 8 of NDPS Act (added later on), registered at Police Station Titram, District Kaithal.

Learned counsel for the petitioners have relied upon the order dated 06.07.2021 passed in CRM-M-41404-2020, CRM-M-3550-2021, CRM-M-8581-2021, CRR-1191-2020 and CRR-1325-2020, vide which co-accused Satish Kumar, Vinod Kumar, Lakhwinder Singh @ Lucky, Reshan Singh, Nazeem Khan @ Jimmi and Dashrath Singh were granted the concession of regular bail. The operative part of the order reads as under: -

“...Brief facts of the case are that the FIR was registered at the instance of Ram Kumar, ASI STF Unit, Ambala while sending information under Section 41 of the NDPS Act that the police party, headed by him, has received a secret information that co-accused Sarvjit Singh @ Sabli and Vipin are indulged in the business of narcotics and they are coming in a truck bearing registration number HR-64-5638 and they can be apprehended by

putting a barrier on the bridge. After sending the information, the police registered the FIR and apprehended both the accused. On search of the vehicle, 876 Kgs. of poppy straw/husk was recovered and both of them were arrested. During investigation, these accused suffered disclosure statements naming as many as 09 more persons as accused.

Arguments

Learned counsel, appearing for petitioner Satish Kumar, submits that when co-accused were arrested on 26.05.2020 and on the next date, they recorded their disclosure statement that they had brought poppy husk from Madhya Pradesh and had to supply the same to one Jain r/o Nirwana, Vinod r/o Cheeka, Suresh and his brother r/o village Karodan.

Learned counsel further submits that thereafter, the police recorded the second disclosure of accused Sarvjit Singh @ Sabli, in which the name of the petitioner figured as a person, who was to receive some amount of the poppy husk and thereafter, the petitioner was arrested on 25.06.2020, however, no narcotic was recovered from him. It is further submitted that in pursuance to second disclosure, suffered by accused Sarvjit Singh @ Sabli, no evidence has come forward to corroborated the same.

Learned counsel further submits that as per this disclosure, one Yusuf Khan and Arif @ Pappu were said to be the supplier of the poppy husk and later on, they were also nominated and

arrested.

It is further submitted that till date, charges have not been framed and total 49 prosecution witnesses are cited and the petitioner was granted interim bail for three days for attending the marriage of his sister and after availing the same, he has surrendered back and has not misused the same.

Learned counsel further submits that similarly situated co-accused, namely Rahul @ Gurlal Singh, who was also nominated on the disclosure statement of accused Sarvjit Singh @ Sabli and Vipin, has already been granted concession of regular bail, vide order dated 18.02.2021 passed by a Co-ordinate Bench in CRM-M-34192-2020 noticing the fact that the challan has been presented and no narcotic substance was recovered from him and the only evidence against him is the disclosure statement of the co-accused.

Learned counsel, appearing for petitioner Vinod Kumar, submits that after his name surfaced in the disclosure statement of aforesaid two co-accused, the petitioner was arrested, however, nothing was recovered from him. Learned counsel further submits that even during investigation, the police has taken the details of the bank account and nothing was found showing that any transaction has taken place from the bank account of the petitioner.

It is further submitted that the petitioner is a chronic eye

patient and is taking treatment of his right eye, for which, he has already been operated due to loss of eye sight.

Learned counsel further argues that petitioner is in judicial custody for the last about 11 months and though he was previously convicted for possessing small quantity of contraband in the year 2010, however, except that he is not involved in any other case.

Learned counsel, appearing for petitioners Lakhwinder Singh @ Lucky and Resham Singh, submits that petitioners are the brothers of co-accused Rahul @ Gurlal Singh, who has already been granted concession of regular as noticed above. It is further submitted that the case of the petitioners are on the similar footing to that of co-accused Rahul @ Gurlal Singh as he was also nominated on the disclosure of co-accused.

Learned counsel further submits that the petitioners are carrying on their separate business in Gujarat and have no antecedents of involvement in any other case.

Learned counsel, appearing for petitioner Nazeem Khan, argues that the petitioner is a juvenile in conflict with law, aged about 15 years, and was a student of 7th Standard at the time when he was arrested.

Learned counsel further submits that except the disclosure of co-accused, there is nothing on record to suggest that petitioner played any active role. It is further submitted that Juvenile Justice Board as well as Additional Sessions Judge have wrongly declined

the concession of regular bail to the petitioner as the maximum punishment under the Act is three years and the petitioner has already undergone custody of about 01 year and 01 month and he is not involved in any other case.

Learned counsel further submits that the only allegation against the petitioner is that main accused used to call him on his mobile phone.

Learned counsel, appearing for petitioner Dashrath Singh, submits that petitioner has been declared a juvenile in conflict with law by the Juvenile Justice Board, vide order dated 01.10.2020 as he was less than 18 years of age.

It is further argued that even from this petitioner, no contraband was recovered and the allegations are that petitioner has given a SIM to one Kuldeep.

Learned State counsel has filed the custody certificate of all the accused/petitioners giving details of judicial custody undergone by them. It is not disputed that co-accused Rahul @ Gurlal Singh has already been granted concession of regular bail as noticed above.

In reply to arguments, raised on behalf of petitioner Satish Kumar, learned State counsel submits that recovery from the main accused was of commercial quantity and as per disclosure of co-accused Sarvjit Singh @ Sabli, the petitioner has given Rs. 2 Lakh for supply of poppy husk and he was involved in one more case,

however, he stands acquitted in that case and now no case is pending against him except the present FIR.

Learned State counsel, in reply to arguments raised on behalf of petitioner Vinod Kumar, submits that the petitioner has given Rs. 54,000/- in favour of co-accused Sarvjit Singh @ Sabli to bring poppy husk from another accused Dashrath Singh (a juvenile from Madhya Pradesh).

In reply to argument, raised on behalf of petitioners Lakhwinder Singh @ Lucky and Resham Singh, learned State counsel submits that they are the brothers of co-accused Rahul @ Gurlal Singh and Resham Singh has transferred Rs. 20,000/- in the bank account of co-accused Rakesh and both the petitioners have paid cash amount to main accused.

Learned State counsel, in reply to arguments raised on behalf of Nazeem Khan @ Jimmi, could not dispute that he is a juvenile in conflict with law, however, submits the Board has rightly formed an opinion that if he is released on bail, there is a likelihood that he may be exposed to moral, physical and psychological danger as it has come in the report of special investigation that he was influenced by his friends to indulge in this business and being a resident of Madhya Pradesh, he may flee away from the justice.

In reply to arguments, raised on behalf of petitioner Dashrath Singh, learned State counsel submits that though he has

been declared a juvenile in conflict with law, however, releasing him may expose him again to activities of involvement in drug business.

Order

After hearing learned counsel for the parties and going through the material on record, it is apparent that all the accused, including two juveniles, are in judicial custody for the last more than one year; they are not facing any other trial under the NDPS Act; there are 48 prosecution witnesses, however, till date, only the charges have been framed; all the accused have been nominated on the disclosure of two main accused and one of the accused, namely Rahul @ Gurlal Singh, has already been granted concession of regular bail, vide order dated 18.02.2021, therefore, considering the submissions made by all the learned counsel for the petitioners and also in view of the judgment rendered by Hon'ble Supreme Court in Tofan Singh vs. State of Tamil Nadu, 2013 (9) SCR 962, it is yet to be established that if the disclosure of a co-accused is admissible against another accused or not, I find that the petitioners, including both the juveniles, are entitled to get the concession of regular bail as it would not be in the interest of justice to keep them behind bars as they have undergone considerable custody, the petitions, bearing CRM-M Nos. 41104 of 2020, 3550 & 8581 of 2021, are allowed and petitioners Satish Kumar, Vinod Kumar, Lakhwinder Singh @

Lucky and Resham Singh are granted concession of regular bail, subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

Accordingly, the revision petitions, bearing CRR Nos. 1191 & 1325 of 2020, are also allowed and while setting aside the impugned orders, passed by the Courts below, petitioners Nazeem Khan @ Jimmi and Dashrath Singh are granted concession of regular bail, subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned...”

For the sake of brevity, facts are not reproduced again.

Learned counsel for the petitioners submit that all the petitioners were nominated on the disclosure statement of co-accused and after their arrest, no recovery was effected.

Learned counsel for petitioner Amit submits that the petitioner is in custody for the last 01 year and 07 months and is not involved in any other case.

Learned counsel for petitioner Yusuf Khan submits that the petitioner is in custody for the last 01 year and 07 months and is not involved in any other case under NDPS Act.

Learned counsel for petitioner Rakesh @ Gidama submits that the petitioner is in custody for the last 01 year and 07 months and he is involved in one more case under NDPS Act of 2019, but is on bail.

Learned State counsel has filed the custody certificates dated 10.01.2022 in the Court today and has submitted that out of total 49 prosecution witnesses, 04 PWs have been examined.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the aforesaid facts and circumstances of the case and also in view of the fact that aforesaid co-accused of the petitioners have already been released on regular bail and all the petitioners have been nominated in the FIR on the basis of disclosure statement of co-accused, therefore, it will be a matter of trial whether disclosure made by co-accused is admissible against the petitioners or not and also considering their long custody, all these three petitions are allowed and petitioners Amit Kumar, Yusuf Khan and Rakesh @ Gidama are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate, concerned.

Petitions are disposed of.

A photocopy of this order be placed on the files of connected cases.

[ARVIND SINGH SANGWAN]
JUDGE

12.01.2022
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No