

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision : 21.04.2022

1.

CRM-M-40027-2021

Brijpal

... Petitioner

Versus

State of Punjab

... Respondent

2.

CRM-M-41896-2021

Anil Kumar Kashyap

... Petitioner

Versus

State of Punjab

... Respondent

3.

CRM-M-45596-2021

Rakesh Verma

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Amardeep Singh, Advocate
for the petitioners in CRM-M-40027-2021 &
CRM-M-41896-2021

Mr.Sahil Puri, Advocate
for the petitioner in CRM-M-45596-2021.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This order will dispose of three petitions. The first petition has been filed by Brijpal, i.e. CRM-M-40027-2021, the second petition has been filed by Anil Kumar Kashyap, i.e. CRM-M-41896-2021 and the third petition has been filed by Rakesh Verma, i.e. CRM-M-45596-2021.

All the said petitions have been filed under Section 439 Cr.P.C. for releasing the petitioners on regular bail during the pendency of trial in FIR no.259 dated 11.07.2021 registered under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at Police Station Sohana, District SAS Nagar.

CRM-M-41896-2021

At the outset, learned counsel for the petitioner Anil Kumar Kashyap has submitted that since the alleged recovery has been effected from petitioner Anil Kumar Kashyap, thus, he may be permitted to withdraw this petition, at this stage.

In view of the statement given by learned counsel for the petitioner, the petition of the petitioner Anil Kumar Kashyap is dismissed as withdrawn, at this stage.

CRM-M-40027-2021 & CRM-M-45596-2021

Learned counsel for the petitioners Brij Pal and Rakesh Verma have jointly submitted that in the present case, even as per the FIR, the alleged recovery of 3 kg. opium has been effected from bag which was being carried in his hand by Anil Kumar Kashyap. It is further submitted that it is not the case of the prosecution that the present petitioners were in same vehicle travelling with the said Anil Kumar Kashyap but as per the case of the prosecution, all the three persons were standing. It is submitted

that thus, no recovery has been effected from the petitioners and recovery effected from co-accused Anil Kumar Kashyap, cannot be stated to be linked to the petitioners. It is stated that the petitioners Brijpal and Rakesh Verma are not involved in any other case and they have been in custody since 11.07.2021 and the challan in the present case has already been presented and there are 10 prosecution witnesses and none of them have been examined and thus the trial would take time. It is also stated that these witnesses are official witnesses, thus the question of influencing them does not arise.

Learned State counsel has opposed the present petitions for regular bail and has submitted that although the recovery has been effected from the bag which was being carried by co-accused Anil Kumar Kashyap but all the three persons were standing together and from reading of the FIR, it is clear that said three persons who belong to the same district, had common intention of carrying opium. It is submitted that 3 kgs of opium would fall within the ambit of commercial quantity as the commercial quantity of opium starts from 2.5 kgs. It is also submitted that the secret information was against all the three persons.

This Court has heard learned counsel for the parties and has perused the record.

In the present case, it is not in dispute that the bag in which opium was being carried, was in the hand of co-accused Anil Kumar Kashyap and said Anil Kumar Kashyap has withdrawn his petition for regular bail, at this stage. The petitioners are not alleged to be carrying any bag, nor any recovery has been effected from them. The petitioners Brijpal and Rakesh Verma are not stated to be only travelling in any vehicle / car

along with said Anil Kumar Kashyap and were stated to be standing along with said Anil Kumar Kashyap. The question as to whether in such a situation, the petitioners could be stated to be in conscious possession of the opium recovered is a matter of debate which would be determined by the trial Court. Since no recovery has been effected from the petitioners and the petitioners are not involved in any other case and they have been in custody since 11.07.2021, and challan has already been presented and there are 10 prosecution witnesses and none of them have been examined and thus, the trial is also likely to take time and the said 10 prosecution witnesses are also police officials, and thus the question of influencing them does not arise, thus, the said two petitioners deserve to be granted the said concession.

Keeping in view the abovesaid facts and circumstances, the present petitions, i.e. CRM-M-40027-2021 & CRM-M-45596-2021 are allowed and the petitioners Brijpal and Rakesh Verma are ordered to be released on bail on their furnishing bail bonds with two heavy sureties to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to them not being required in any other case.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

April 21, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No