

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

Date of Decision:-14.12.2022

CRM-M-37827-2022

Parkash Sahu.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

AND

CRM-M-56321-2022

Rajendra Sahu.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Lakhvir Kumar, Advocate for the Petitioner
(in CRM-M-37827-2022).

Mr. Ashish Nagar, Advocate for the Petitioner
(in CRM-M-56321-2022)

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

By this common order I shall dispose of both the
aforementioned petitions as the same have arisen out of one and the same
FIR.

The Prayer in these petitions under Section 439 Cr.PC is for the
grant of regular bail in case FIR No.34 dated 06.04.2022 under Sections 18

& 29 of NDPS Act registered at Police Station Sadar Banga, District S.B.S. Nagar.

The brief facts of the case are that while the police party was on patrolling duty two persons were seen coming on foot holding a long black colour heavy bag. On seeing the police party they threw the bag on the ground and tried to slip away. On being caught they disclosed their names as Rajendra Sahu (petitioner in CRM-M-56321-2022) and Parkash Sahu (petitioner in CRM-M-37827-2022). On search of the bag 2kg 600 grams of Opium was recovered.

The Counsel for the petitioners contend that there is a delay of 07 days in dispatching the sample to the FSL. The complainant and the investigating officer was the same person and all other witnesses were official witnesses. There was no independent witness of the recovery and the mandatory provisions of Section 50 of the NDPS Act have not been complied with. Even otherwise the recovery from the petitioners was 2Kg 600 Grams of Opium and the commercial quantity was 2Kg 500 Grams and because the recovery was of a quantity marginally above the commercial quantity the petitioners were entitled to the concession of bail more so when they were first time offenders and none of the 09 prosecution witnesses had been examined. Reliance is placed on the judgment in *Gursewak Singh @ Sebi Vs. State of Punjab CRM-M-34803-2021 Decided on 21.04.2022, Yadwinder Singh @ Ghona Vs. State of Punjab 2019(1) Law Herald 43 & Gurpreet Kumar Vs. State of Punjab 2012(2) DC)(Narcotics) 862.*

The Counsel for the State on the other hand contends that the recovery from the petitioners is of commercial quantity of contraband and as such they were not entitled to the grant of bail. He however, does not

dispute the period of custody undergone by the petitioners as also the fact that none of 09 prosecution witnesses have been examined till date and that the recovery from the petitioners is marginally above the commercial quantity.

I have heard learned Counsel for the parties at length.

This Court in *Gursewak Singh @ Sebi's case (supra)* granted bail to the petitioner wherein the recovery of contraband was marginally above the commercial quantity. In *Gurpreet Kumar's case (supra)* this Court had granted bail to the petitioner therein wherein the recovery was of 2.6 Kg of Opium. Similarly in *Yadwinder Singh @ Ghona's case(supra)* this Court had granted bail to the petitioner therein wherein the recovery was of 2.8Kgs of Opium.

The petitioners are in custody since 06.04.2022. The recovery in the present case is marginally above the commercial quantity and since the petitioners are first time offenders a prima facie satisfaction under Section 37 of the NDPS Act can be recorded.

Thus, without commenting on the merits of the case, the present petitions are allowed and petitioners-**Parkash Sahu** son of Sh. Ganesh Sahu (in CRM-M-37827-2022) and **Rajendra Sahu** son of Sh.Hari Sahu (in CRM-M-56321-2022) are ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Ludhiana.

The petitioners shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that they are not involved in any other crime other than the cases mentioned in this order.

In addition, the petitioners (or any one on their behalf) shall

prepare a FDR in the sum of Rs.2,00,000/- each and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioners from trial without sufficient cause.

The petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

December 14, 2022

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No