

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205

CRM-M-37531-2022

Date of Decision: 11.11.2022

Akhilesh Chandra @ Akhlesh Chander

... Petitioner

VS.

State of Punjab

... Respondent

CRM-M-20443-2022 (O&M)

Date of Decision: 11.11.2022

Mahesh Kumar @ Babu

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Harsh Chopra, Advocate (CRM-M-37531-2022)
Mr. PS Khaira, Advocate (CRM-M-20443-2022)
for the petitioners

Mr. Aman Dhir, DAG Punjab

Sandeep Moudgil, J. (Oral)

(1) By this order, I shall dispose of the above-cited two criminal miscellaneous petitions. For the sake of facts and order, CRM-M-37531-2022 is treated as the lead case.

(2) The petitioner has filed the present petition under Section 439 CrPC seeking regular bail in case FIR No.71 dated 10.03.2022 under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sahnewal, District Police Commissionerate Ludhiana.

(3) Brief facts of the case are that a police party headed by SI Raghuvir Singh was holding a check post. Two youths were seen coming, who on seeing the police party, became nervous, turned back and started

walking fast. When Sub Inspector called them to stop, then both threw away loaded polythene bags (lifafas), which they were holding separately, on the ground. The polythene bag (lifafa) which was thrown away by petitioner Akhilesh Chander, was containing 1 Kg.500 grams opium and the polythene bag (lifafa), thrown away by petitioner Mahesh Kumar was containing 1 Kg.300 grams opium.

(4) Learned Counsel for petitioner has contended that the petitioner has been falsely implicated. The recovery from the petitioner is of 'non commercial quantity'. Investigation is pending and it will take time to present the Challan and to conclude the trial. No useful purpose shall be served by keeping the petitioner behind bars indefinitely and has, thus, prayed for granting regular bail to the petitioner.

(5) Learned State counsel averred that both the petitioners were moving together though were carrying separate bags which they threw on the ground on seeing the police party. He has also submitted the custody certificate dated 10.11.2022 which is taken on record. According to the same, both the petitioners are behind the bars from the last 8 months and 1 day and there is no other case registered or pending against them. He further averred that the total quantity of contraband recovered from both the petitioners is to be considered in order to adjudicate upon the bail application in which case the recovery was of a commercial quantity thereby attracting the bar of Section 37 of the NDPS Act.

(6) At this stage, learned counsel for the petitioner urged that the case of the petitioner is covered by the judgment of this Court passed in **CRM-M-19334-2022 (Anurag Shrivastav vs. State of Punjab)** decided on

13.05.2022 to contend that the total quantity of contraband recovered from both the accused persons is not to be seen, collectively, when individual recovery from each accused is of non-commercial quantity and as such it was held that the rigors of Section 37 of the NDPS Act are not applicable in such circumstances.

(7) Keeping in view the totality of the facts and circumstances and since the conclusion of the trial is likely to take sufficient time and no fruitful purpose would be served by keeping the petitioners behind the bars and in view of the law laid down in Anurag Shrivastava's case (supra), the prayer made in these petitions are allowed and the petitioners are directed to be released on regular bail on furnishing bail and surety bonds to the satisfaction of the trial Court/Illaqa Magistrate, concerned.

(8) Disposed off.

11.11.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No