

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218+233

CRM-M- 41003 of 2022 (O&M)
Date of Decision: 02.12.2022

Rattan Singh @ Rattan

....Petitioner

Versus

State of Punjab

.....Respondent

2)

CRM-M-52770 of 2022 (O&M)

Manjinder Singh @ Bhular

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate,
for the petitioner in CRM-M-41003 of 2022.

Ms. J. S. Gill, Advocate,
for the petitioner in CRM-M-52770 of 2022.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

CRM-33445 of 2022 in
CRM-M-41003 of 2022

For the reasons mentioned in the application, the same is allowed
subject to all just exceptions.

CRM-45757 of 2022 in
CRM-M-52770 of 2022

The present application has been filed under Section 482 of the Code of Criminal Procedure for transposing the prayer clause of the petition with the one as mentioned in paragraph 3 of the application.

It has been stated in the application that the certain sections under which charges were framed against the applicant-petitioner were missing from the prayer clause of the petition and some of them were wrongly mentioned.

In view of the aforesaid facts and circumstances, the present application is allowed.

Main cases

Both the cases are taken up together for final disposal with the consent of learned counsel for the parties as both arise out of the same FIR and the prayer in both the cases is for the grant of regular bail in FIR No.12 dated 15.01.2022, under Sections 18, 29 and 27(A) of the NDPS Act, 1985 (Section 25 of the Arms Act added later on), registered at Police Station Tanda, District Hoshiarpur.

It has been submitted by both the learned counsels for the petitioners that it is a case where the police on the basis of information had apprehended one co-accused, namely, Vaneet Kumar from whom there was a confiscation of 70 gms of opium and thereafter on the basis of disclosure statement of the aforesaid co-accused, both the present petitioners have been nominated. They submitted that the disclosure statement of a co-accused is not admissible in evidence *per se* and there is no other sufficient material available with the prosecution to connect the present petitioners to the present offence. They further submitted that thereafter in order to implicate the petitioners falsely, they have shown recovery of Rs.70,000/- from the

petitioner Rattan Singh and one pistol and four cartridges from the petitioner Manjinder Singh @ Bhular and also 1 Kg of opium not from the conscious possession of any of the petitioners but from the godown where they were stated to be sitting. Learned counsel for the petitioners further submitted that both the petitioners are not habitual offenders and are not involved in any other case except that one of the petitioners, namely Manjinder Singh @ Bhular was earlier involved in one case under Sections 364, 323, 324, 34, 120-B IPC and Section 25/54/59 of the Arms Act and it was due to the aforesaid reason only that the police has falsely implicated the petitioner but there is no other sufficient evidence available with the police. They have further submitted that the provisions of Section 27-A of the NDPS Act were also added in the present case. Both the learned counsels for the petitioners further submitted that both the petitioners are in custody from 17.01.2022 and the police has already completed the investigation and thereafter even challan has been filed and now only one witness has been examined. They further submitted that the entire case is based upon the disclosure statement of a co-accused which is not admissible in evidence in view of the judgment of Hon'ble Supreme Court in Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1 and, therefore, the rigour of Section 37 of the NDPS Act will not apply in the present case. It is submitted that so far as the quantity recovered from the other co-accused namely Vaneet Kumar is concerned, the same was only 70 gms of opium and the alleged recovery from the godown where allegedly the petitioners were sitting was 1 Kg of Opium and even collectively also the quantity does not fall under the category of commercial quantity but since the provisions of

Section 27-A of the NDPS Act were later on added, the rights of the petitioners have been prejudicially affected.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated that it is correct that both the petitioners are in custody from 17.01.2022 and one witness has been examined. He has submitted that it is also correct that both the petitioners are not habitual offenders and are not involved in any other case except for the petitioner Manjinder Singh @ Bhular who is involved in one case under Sections 364, 323, 324, 34, 120-B IPC and Section 25/54/59 of the Arms Act. He has further submitted that it is correct that the names of both the petitioners were nominated on the basis of disclosure statement of the co-accused. He has, however, opposed the grant of bail to the petitioners on the ground that after the nomination of the petitioners there was a recovery of Rs.70,000/- from petitioner Rattan Singh which was drug money and from the other petitioner Manjinder Singh @ Bhular there was recovery of one country made pistol and 4 cartridges and that was the reason as to why the provisions of Section 27-A of the NDPS Act and the Arms Act were invoked.

I have heard learned counsel for the parties.

The investigation of the case has been completed and thereafter charges have been framed and one witness has been examined. Both the petitioners have faced incarceration for more than 10 months. Both the petitioners are stated to be not involved in any other case except for the petitioner Manjinder Singh @ Bhular who was involved in the aforementioned case. The confiscated quantity from the co-accused, who was arrested on the spot was only 70 gms of opium and the alleged recovery from the godown where the petitioners were sitting was 1 Kg

of opium and even collectively it does not fall under the category of commercial quantity. Since the provisions of Section 27-A of the NDPS Act have been added, the effect of Section 37 of the NDPS has to be considered. Both the petitioners have been nominated on the basis of disclosure statement of the co-accused. It has been so stated by the learned counsel for the parties that so far as the money which is stated to be Rs.70,000/- allegedly recovered from the petitioner Rattan Singh is concerned, that was the money belonging to him and at this stage it cannot be termed as drug money because that is a matter of trial which can be seen at the time of adducing of evidence. So far as the recovery of pistol and 4 cartridges from the petitioner Manjinder Singh @ Bhular is concerned, the same is also a matter of trial because learned counsel for the petitioner has specifically denied the same and has stated that it was because of the existence of the earlier case in which he was involved that the police has falsely implicated him. No other sufficient material has come forward from the State except that the name of the petitioners were nominated on the basis of disclosure statement of a co-accused and thereupon recovery from godown. In view of the background of the petitioners, custody and the other factors, this Court is of the view that at least at this stage there are reasons to believe that the petitioners are not guilty of the offence. Apart from the above, it is not the case of the State counsel that in case both the petitioners are released on bail then they may repeat the offence or they 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.

Both the petitioners had earlier filed bail petitions before this Court but had withdrawn the same in the month of July 2022 at that stage. Now,

according to the learned counsel for the parties, one witness has been examined and, therefore, present successive second bail application would be maintainable.

Therefore, without commenting anything on the merits of the case, this Court deems it fit and proper to grant the concession of regular bail to both the petitioners. Consequently, 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

December 02, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No