

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.53367 of 2021 (O&M)
Date of Decision: 25.08.2022.

Gagan Khan and another

... Petitioners

Vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. L.S. Sekhon, Advocate
for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this 2nd petition is for grant of regular bail to the petitioners under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.602 dated 22.08.2020, for offence punishable under Sections 15, 18(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS') registered at Police Station Sadar Hisar, District Hisar. The earlier application filed by petitioner Gagan Khan i.e., CRM-M-39142 of 2020 was disposed on 01.12.2020 granting interim bail to the petitioners awaiting the report of the FSL. Similarly, the first application filed by the petitioner-Jassi Khan i.e., CRM-M-43808-2020 was also disposed of in the same term vide order dated 07.01.2021.

Counsel for the petitioners submits that thereafter, the petitioners filed the petition before this Court and the same was disposed of on 12.11.2021 directing the petitioners to surrender before the trial Court and apply for regular bail afresh. Counsel for the petitioners submits that

petitioners have surrendered back and as on today their custody is more than 01 year, 21 days and out of 14 witnesses, only two PWs have been examined and they are not involved in any other case and it will take long time in conclusion of the trial.

As per status report by way of affidavit of the Investigating Officer, available on record, on 21.08.2020, Police team headed by ASI Naresh Kumar, received a secret information that the petitioners are carrying opium and poppy-husk in a truck No.PB-13BC-6686 and can be apprehended. On receiving the information, a ruqa was sent to the Police Station and thereafter, a heading team was prepared and the aforesaid truck was stopped in presence of DSP Narayan Chand. Thereafter, while carrying the search of the petitioners 2 kg. 700 grams of opium as well as 20 kgs of poppy husk was recovered.

The counsel for the petitioners submits that even the personal search of the petitioners was conducted. Counsel for the petitioner further submits that ASI Naresh Kumar in the same with the complainant as well as Investigating Officer as the further investigation was also carried out by the same person, and therefore it will be a debatable issue before the trial Court whether a proper procedure was followed or not.

Learned State counsel as per the affidavit could not dispute that the petitioners are not involved in any other case and also not disputed that out of 14 witnesses only two PWs have been examined and petitioners are interested for the last more than one year.

Without commenting anything on merits of the case, considering the fact that the petitioners are in custody for the last more than one year; the petitioners are not involved in any other case of similar nature;

the custodial interrogation of the petitioners are not required; two PWs have been examined so far and the conclusion of the trial will take some time, this petition is allowed and the petitioners are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate. However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

25.08.2022
rekha sharma

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*