

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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(i) CRM-M-2394-2023  
Date of decision: 20.12.2023

Mohd. Haleem .....Petitioner

versus

State of Punjab .....Respondent

(ii) CRM-M-13181-2023  
Date of decision: 20.12.2023

Jaggi .....Petitioner

versus

State of Punjab .....Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: Mr. P.S. Sekhon, Advocate  
for the petitioner in CRM-M-2394-2023.

Mr. I.S. Kooner, Advocate  
for the petitioner in CRM-M-13181-2023.

Mr. Rozer Kumar Aggarwal, A.A.G, Punjab  
for the respondent-State.

**NAMIT KUMAR, J. (ORAL)**

1. This order will dispose of the above mentioned both the petitions as the same have arisen out of the common FIR.
2. The petitioners have filed the instant petitions under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.146 dated 31.12.2021 under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City-2, Malerkotla.
3. Brief facts of the case are that on 31.12.2021, the police

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party headed by ASI Harjit Singh was doing patrolling duty and going from Manna Phatak, Malerkotla to Village Maana. When they reached about half kilometer ahead to Maana Phatak, they saw two persons searching something in a transparent polythene and on seeing the police party, they tried to fled from the spot after throwing the polythene. The said polythene fell down and the intoxicant tablets were scattered on the ground. Thereafter, the police apprehended both the persons who disclosed their name as Jaggi Singh and Mohd. Haleem (the petitioners). On search, 3150 tablets make Alprazolam Tablets IP 0.5 mg, 350 tablets make Tramadol HCI SP-100 SR, 300 tablets make Tramadol Hydrochloride Dicylomine Hydrochloride & Acetaminophen Capsules Spas-Trancan Plus (total 3800 tablets) were recovered from them.

4. Learned counsel for the petitioners submit that the petitioners are innocent and have been falsely implicated in the present case. The allegations in the FIR are improbable because both the petitioners are said to have intoxicant tablets in a transparent polythene which is totally unbelievable as no one can keep such tablets in transparent polythene. The petitioners have nothing to do with the alleged recovery. Mandatory provisions of the NDPS Act were not complied with by the police during the search. They submit that the petitioners are in custody since 31.12.2021. They referred to a latest judgment of the Hon'ble Supreme Court passed in ***Criminal Appeal No.943 of 2023 titled as "Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)"*** decided on 28.03.2023 to contend that when there is a long

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delay in the trial and especially when it is not the fault of the accused and in that situation even the effect of Section 37 of the NDPS Act will be diluted in the given facts and circumstances of each and every case. They further submit that investigation in the present case is complete; challan has been presented on 18.06.2022; charges have been framed on 06.07.2022. Out of total 15 prosecution witnesses, only 01 has been examined so far and 08 have been given up. They further submits that trial may take a considerable time to conclude, therefore, no fruitful purpose would be served by detaining the petitioners behind bars.

5. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioners on the ground that recovery of 3800 intoxicant tablets and capsules has been effected from the petitioners which is commercial quantity. He further submits that petitioner-Mohd. Haleem is not involved in any other case whereas petitioner-Jaggi is involved in 01 other case under the NDPS Act, although he is on bail in the said case. He, however, submits that petitioners are in custody for the last more than 01 year and 11 months; investigation in the present case is complete; challan has been presented; charges have been framed and out of total 15 prosecution witnesses, only 01 has been examined so far and 08 have been given up.

6. Learned counsel for petitioner-Jaggi submits that in other case pending against petitioner-Jaggi, he is on bail. Relying upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382*** learned counsel for petitioner-Jaggi contends that the facts and circumstances of the present

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case are to be seen while deciding a bail application and the bail application of the petitioner-Jaggi cannot be rejected solely on the ground that he is involved in other case under the NDPS Act. The relevant portion of the said judgment is reproduced hereinbelow:-

*“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”*

7. I have heard learned counsel for the parties and perused the record.
8. In view of the custody period undergone by the petitioners, it is apposite to refer to a few judgments of Hon’ble Supreme Court in this regard wherein Hon’ble Supreme Court has granted the concession of bail solely on ground of long custody :-

| Case Number                                   | Date of Decision | Title of case                                        | Period which the accused had undergone when granted bail by Hon'ble Supreme Court |
|-----------------------------------------------|------------------|------------------------------------------------------|-----------------------------------------------------------------------------------|
| Criminal Appeal No.245/2020                   | 07.02.2020       | Chitta Biswas @ Subhas Vs. the State of West Bengal  | 1 year and 7 months                                                               |
| Criminal Appeal No.668/2020                   | 12.10.2020       | Amit Singh Moni Vs. State of Himachal Pradesh        | 2 years and 7 months                                                              |
| Special Leave to Appeal (Crl.) No.5187of 2021 | 10.11.2021       | Kulwant Singh Vs. The State of Punjab                | More than 2 years                                                                 |
| Special Leave to Appeal (Crl.) No.5769/2022   | 01.08.2022       | Nitish Adhikary @ Bapan Vs. the State of West Bengal | 1 year and 7 months                                                               |

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|------------------------------------------------|------------|--------------------------------------------------------|-----------------------------|
| Special Leave to Appeal (Crl.) No.4173 of 2022 | 04.08.2022 | Shariful Islam @ Sarif Vs. the State of West Bengal    | 1 year and 6 months         |
| Criminal Appeal No.1169 of 2022                | 05.08.2022 | Gopal Krishna Patra @ Gopalrusma Vs. Union of India    | 2 years 1 month and 17 days |
| Special Leave to Appeal (Crl.) No.5530-2022    | 22.08.2022 | Mohammad Salman Hanif Shaikh Vs. the State of Gurjarat | About 2 years               |
| Special Leave to Appeal (Crl.) No.7840 of 2022 | 31.10.2022 | Shahjad Vs. The State of Uttar Pradesh                 | About 2 years               |

9. The Hon’ble Supreme Court in *Special Leave to Appeal (Crl.) No.4169 of 2023 – Rabi Prakash v. The State of Odisha decided on 13.07.2023* has held that in case of prolonged incarceration, conditional liberty will override the statutory embargo under Section 37 of the NDPS Act as the prolonged incarceration is against fundamental right guaranteed under Article 21 of the Constitution of India.

10. Keeping in view the custody of the petitioners, which is 01 year, 11 months and 20 days; investigation is complete; challan has been presented; charges have been framed and out of total 15 prosecution witnesses, only 01 has been examined so far and 08 have been given up and trial is likely to take a considerable time, however, without commenting upon the merits of the case, both the petitioner are ordered to be released on regular bail during trial on their furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court. However, in addition to conditions that may be imposed by the trial Court/Duty Magistrate concerned, the petitioners shall remain bound by the following conditions: -

- (i) The petitioners shall not mis-use the liberty granted.

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- (ii) The petitioners shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioners shall not absent themselves on any date before the trial.
- (iv) The petitioners shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioners shall deposit their passports, if any with the trial Court.
- (vi) The petitioners shall give their cellphone numbers to the police authorities and shall not change their cell-phone number without permission of the trial Court.
- (vii) The petitioners shall not in any manner try to delay the trial.

11. In case of breach of any of the aforesaid conditions and those which may be imposed by the trial Court, the prosecution shall be at liberty to move an application for cancellation of bail of the petitioners.

12. The petitions stands disposed of accordingly.

20.12.2023  
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(NAMIT KUMAR)  
JUDGE

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