

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 21.07.2023

CRM-M-2810-2022

HIRA RAM

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CRM-M-50245-2022 (O&M)

SHAMBHU RAM

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. D.N. Ganeriwala, Advocate
in CRM-M-2810-2022.

Mr. K.S. Brar, Advocate for the petitioner
in CRM-M-50245-2022.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

By way of these two petitions filed under Section 439 Cr.P.C.
the petitioners pray for grant of regular bail during the pendency of trial in
case F.I.R. No.64 dated 24th of July, 2021 registered at Police Station Sadar
Abohar, District Fazilka.

2. As per the story put-forth by the prosecution it has been alleged
as under :

“Today I, ASI along with SC Praveen Kumar No. 1339/FZK,
Constable Kuldeep Raj No. 1297/FZK, PHG Avtar Singh No.
6519, PHG Gurpreet Singh No. 6847 via private vehicle were

present at Abohar Ganganagar Road Bus Stand Alamgarh for patrolling and checking of suspicious persons and a special informer came to me and provided information that Heera Ram son of Aadu Ram resident of Chatana Police Station Pachu Tehsil Nokha District Bikaner and Shambhu Ram son of Aadu Ram resident of Gogelabh Police Station SadarNagaur Tehsil Nagaur District Nagaur (Rajasthan) are habitual of bringing 'dodachura' poppy husk and selling in Punjab and that they also keep illegal weapons in their possession and that today in Car No. RJ-14AC-0876 Mark Creta Coor White they are coming from Rajasthan to Puniab and they are having illegal weapons. If barricading is conducted at an appropriate place then suspects Heera Ram and Shambhu Ram can be apprehended along with above car, poppy husk 'dodachura' and illegal weapons. Information is reliable and precise and suspects Heera Ram and Shambhu Ram above have conducted crime under sections 15/61/85 NDPS Act and Sections 25/27/54/59 of Arms Act by doing above acts and accordingly, written submission was prepared against Heera Ram son of Aadu Ram resident of Chatana Police Station Pachu Tehsil Nokha District Bikaner and Shambhu Ram son of Aadu Ram resident of Gogelabh Police Station SadarNagaur Tehsil Nagaur District Nagaur (Rajasthan) and the same is being sent to Police Station via PHG Avtar Singh 6519 for case registration. Case be registered and case number be informed. PCR/FZK may be informed.xxx”

3. Counsels for the petitioners submit that it is a case of false implication. The petitioners were picked from Rajasthan and implicated in the present case. After Challan was presented on 24th of November, 2021 an application was moved by the petitioner for preserving the call details along with the tower locations of the mobile numbers. Pending that

application, on 20th of January, 2022 charges were framed against the petitioners. Vide order dated 25th of March, 2022 Trial Court ordered to preserve the call detail records along with tower locations observing as under :

“So, keeping in view the facts and circumstances of the case and in the interest of justice, present application is allowed and SHO of concerned police station is directed to get preserved the call details alongwith tower locations of mobile numbers 80549-70706 in the name of ASI Manjit Singh, 94179-16422 in the name of Inspector Gurwinder Singh, 94170-80212 in the name of ASI Amrik Singh and mobile No. 98780-58750 in the name of ASI Kulwinder Singh for the period from 23.07.2021 to 24.07.2021. The Nodal Officers of the concerned companies are also directed to produce the same in the court as and when directed by the court. So, application for preserving call details along-with tower locations is allowed and same is ordered to be attached with the main file.”

4. On 23rd of May, 2022, no procecutiion witness came present. Thereafter on 12th of August, 2022 neither the accused were produced by the Jail Authorities nor prosecution evidence was present. One PW-HC Amrik Singh came present on 10th of October, 2022 but his name was ordered to be deleted from the list of witnesses. An application thereafter was moved on behalf of the petitioners on 8th of December, 2022 for supply of call detail records and despite availing more than five opportunities the same has not been produced. The net effect is that owing to inertness of the prosecution only 1 out of 17 witnesses could be examined after more than 18 months from the date the Charges were framed.

5. Counsels further submit that as per the custody certificate both the petitioners have undergone more than 2 years of custody. Counsel representing petitioner-Hira Ram further submits that Hira Ram has no previous antecedents of having been involved in any matter under the NDPS Act. So far as petitioner-Shambhu Ram is concerned, he is stated to be involved in another case under the NDPS Act but stands admitted to bail in the same.

6. Ld. State Counsel submits that keeping in view the fact that petitioner-Shambhu Ram has a criminal record he does not deserve to be released on bail and keeping in view the quantity of contraband recovered from the petitioners which is commercial in nature rigours of Section 37 of the NDPS Act would be applicable.

7. I have heard counsel for the parties and have gone through records of the case.

8. The precise issue as to where there is apparent conflict between rigours of Section 37 of the NDPS Act and Article 21 of the Constitution of India, already stands answered by the Apex Court in the case of **Rabi Prakash vs. State of Odisha, Petition for Special Leave to Appeal (Cr.) No(s).4169 of 2023**, holding as under :

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty,

the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

9. Without commenting on the merits of the case, keeping in view the incarceration already suffered by the petitioners and in view of law laid down by the Apex Court in **Rabi Prakash's case** (supra), the present petitions are allowed. The petitioners are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned. 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.
- (ii) The petitioners shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioners shall not absent himself 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 numbers without permission of the trial

Court.

(vii) The petitioners shall not in any manner try to delay the trial.

10. 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 cancellation of bail of the petitioners.

11. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

12. Inertness of the prosecution and helplessness of the Court remain unexplained. Trial Court is directed to attach salary of the official witnesses who failed to depose despite service after taking their details from the record.

13. Attachment shall remain in force till the official witnesses appear and depose before the Trial Court.

14. A copy of this order be kept on the file of other connected case.

July 21, 2023
Dpr

(Pankaj Jain)
Judge

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