

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr.No.207(2 cases)

Case No. : CRM-M-6083-2022

Date of Decision : February 02, 2023

Mohammad Alias @ Illiyas Petitioner

vs.

State of Punjab Respondent

Case No. : CRM-M-6353-2022

Date of Decision : February 02, 2023

Manjoor Ahmad Petitioner

vs.

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Ruhani Chadha, Advocate
for the petitioner (in both cases).

Ms. Himani Arora, AAG, Punjab.

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GURBIR SINGH, J. :

Vide this common order, two petitions i.e. CRM-M-6083-2022 and CRM-M-6353-2022 filed by two different persons, shall be disposed of as the FIR involved in both the petitions is the same arising out of the same occurrence.

These are two petitions under Section 439 Cr.P.C. for grant of regular bail to the petitioners in case FIR No.54 dated 13.04.2021, under

Section 15 (c) of the NDPS Act, 1985 (Section 29 of the NDPS Act added later on), registered at Police Station Bhogpur, District Jalandhar.

As per version of the prosecution, information was received that the petitioners were bringing poppy husk from Srinagar in the truck concealed under the *tarpaals*. Police party laid naka. The disclosed truck was signalled to stop. The truck driver tried to flee away with the truck. Truck was stopped. Truck driver and his companion were arrested. The truck driver disclosed his name as Mohammad Alias and the person sitting by his side disclosed his name as Manjoor Ahmad. From their search, poppy husk weighing 200 kilograms in 08 bags of 25 kilogram each were recovered. Samples were drawn and same were taken to custody by the police.

Learned counsel for the petitioners submits that the petitioners are in custody since 13.04.2021 and not even a single witness has been examined in this case. Learned counsel has relied upon orders of the Hon'ble Apex Court in SLP(Crl) No.4173 of 2022 titled Shariful Islam @ Sarif vs. The State of West Bengal decided on 04.08.2022, SLP(Crl) No.5530 of 2022 titled Mohammad Salman Hanif Shaikh vs. The State of Gujarat decided on 22.08.2022 and Criminal Appeal No.245 of 2020 titled Chitta Biswas @ Subhas vs. The State of West Bengal decided on 07.02.2020, wherein concession of regular bail was granted on the basis of custody of more than 01 year and 07 months approximately.

Learned counsel for the petitioners further relies upon two judgments of this Court in CRM-M-24006-2022 titled Sukhwinder Singh

vs. State of Punjab decided on 19.09.2022 and CRM-M-9317-2022 titled Chunni Ram @ Sandeep vs. State of Haryana decided on 22.11.2022, both decided by Co-ordinate Benches of this Court where only period of custody was taken into consideration in order to enlarge the accused on regular bail.

Learned State counsel opposes the prayer made by learned counsel for the petitioners on the ground of recovery being of commercial quantity.

Heard learned counsel for the parties and perused the case file.

On the last date of hearing, report was sought from the Trial Court regarding status of the case, examination of witnesses and reasons for delay, if any. In response thereto, report has been received from the concerned Court, wherein it has been submitted that the challan was presented in this case on 29.09.2021 and charges against both the petitioners were framed on 12.10.2021. The case was fixed for prosecution evidence on various dates but the prosecution witnesses did not appear and the report received on summons from time to time was either 'busy in law and order duty' or 'to appear as witness in another court' etc. and if served, the witness did not appear to record statement. Thus, it was reported that it is totally the prosecution, which is responsible for causing delay in the conclusion of trial against the accused.

Accordingly, considering the fact that the petitioners are in custody since 13.04.2021 i.e. for a period more than 01 year and 09 months, without commenting upon the merits of the case, both the present petitions

are allowed and the petitioners are directed to be released on regular bail,

on their furnishing bail bonds/surety bonds, to the satisfaction of learned Trial Court/Duty Magistrate, Jalandhar.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

A photocopy of this order be placed on the file of the other connected matter.

February 02, 2023

monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>