

CRM-M-8832-2023 (O&M);
CRM-M-8839-2023 (O&M) and
CRM-M-11308-2023 (O&M)

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2023:PHHC:103191

217+219

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8832-2023 (O&M)
Date of Decision: 08.08.2023

(I)
RAM MEHAR

....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CRM-M-8839-2023 (O&M)

(II)
SUBE SINGH

....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CRM-M-11308-2023 (O&M)

(III)
SURJEET @ JEETU

....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON’BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Dr. Anand Kumar Bishnoi, Advocate
for the petitioner in CRM-M-8832-2023.

Mr. Baljeet Nain, Advocate
for the petitioner in CRM-M-8839-2023.

Mr. Aditya Sanghi, Advocate
for the petitioner in CRM-M-11308-2023.

Mr. Naveen Kumar Sheoran, DAG, Haryana and
Ms. Harpreet Kaur, AAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. All the three petitions are taken up together for final disposal with the consent of learned counsel for the parties since all the three petitions arise out of the same FIR and the prayer in all the three cases is for the grant of regular bail.

2. All the three petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.31 dated 26.01.2020, under Section 20(c) of NDPS Act, registered at Police Station City Jhajjar, District Jhajjar, Haryana.

3. The present FIR came to be lodged on the basis of a secret information received by the police officials that in the front of bus stand Surkhpur towards Jhajjar side of road, one canter bearing registration No.HR-65A-9707 was parked. Near the vehicle, one Sube Singh son of Om Parkash (petitioner in CRM-M-8839-2023), who is the driver of the canter and Rambir son of Mange Ram, who is the cleaner of the canter had huge quantity of *ganja* of Surjeet @ Jeetu (petitioner in CRM-M-11308-2023) in the canter. The aforesaid Surjeet @ Jeetu was also present on the spot, who ordered it from Orissa and he came from his village to get the delivery of *ganja* and all the three persons are talking to each other. In case an immediate raid is conducted, then only they could be apprehended with *ganja* on the spot. On the basis of

information, a report under Section 42 of the NDPS Act for information was given to the higher authorities and was sent to the Police Station through Constable Ajit Kumar and, thereafter, ASI alongwith other police party reached in front side of the bus stop of village Surkhpur towards the side of Jhajjar from flyover Jhajjar road Sampla by-pass road where one canter bearing registration No.HR-65A-9707 was standing and three young men were talking with each other. Thereafter, the ASI got stopped their vehicle and tried to apprehend the accused with the help of other officials. Out of them, two boys ran through the fields of mustard near the road and another boy was apprehended and on asking his name, he disclosed his name as Surjeet @ Jeetu (petitioner in CRM-M-11308-2023). On further inquiry from the aforesaid Surjeet @ Jeetu, he disclosed the names of the persons who ran away as Sube Singh (petitioner in CRM-M-8839-2023), who is the driver of the canter and Rambir son of Mange Ram, who is the cleaner of the canter. On this, ASI on the basis of suspicion that in the aforesaid canter there are some narcotics and, therefore, notice under Section 50 of the NDPS Act was given separately to the aforesaid Surjeet @ Jeetu and was informed through notice that he is having in his vehicle bearing registration No.HR-65A-9707 Marka Eicher 3015 that there are some narcotics and you and your vehicle is to be searched and you are having a legal right under the NDPS Act that you can get yourself and your abovesaid vehicle searched by a Gazetted Officer or Illaqa Magistrate. If you want to be searched through a Gazetted Officer or Illaqa Magistrate of your own person, then they can be called on the spot or you and your vehicle can be produced before them. The said notice was read over and made him understand. On this, the aforesaid

Surjeet @ Jeetu after hearing the notice and after understanding the same, put his signatures on the same and witnesses also put their signatures. He stated that he wants himself and the canter to be searched before a Gazetted Officer. Thereafter, ASI contacted one Sh. Shamsher Singh, DSP City, Jhajjar on his mobile, who came after some time in a government vehicle along with his staff. Thereafter, after complying with the provisions of Section 50 of the NDPS Act, the said vehicle was searched and from the back of the cabin of the vehicle, a tarpal was removed and on checking of the back side of cabin, plastic bags were lying. The bags were opened and checked and in each bag, ganja leaves (charas) were recovered. There were total 50 bags which were recovered. The weight of the same was made to be found to be 20 kgs. per bag and in this way, the total weight of 50 bags came out to be 10 quintals of *ganja*. Thereafter, further process was carried on and aforesaid Surjeet @ Jeetu was arrested. The other two petitioners, however, as per the prosecution, fled away from the spot.

4. Learned counsel appearing on behalf of the petitioner-Surjeet @ Jeetu has submitted that the petitioner is in custody from 26.01.2020, which is approximately three years and seven months. He further submitted that the petitioner was earlier involved in three more cases, which were not under the NDPS Act but two cases were under the Excise Act and one case under the IPC. However, he has since been acquitted in two cases i.e. one under the Excise Act and the other under Sections 148, 149, 323, 324, 427, 452 and 506 of the IPC. He has submitted that the petitioner has been falsely implicated in the present case because he was not found in the canter and even as per the prosecution, he was standing next to the canter and, therefore, it cannot be said that the quantity

seized has a connection with the present petitioner. He further submitted that the charges in the present case were framed on 26.02.2021 and only one prosecution witness has been examined till date and the petitioner had to suffer incarceration for long period of time. He has, therefore, prayed for grant of regular bail to the petitioner.

5. Learned counsel appearing on behalf of the petitioner-Ram Mehar has submitted that the name of the petitioner has surfaced on the basis of disclosure statement of aforesaid co-accused, namely, Surjeet @ Jeetu and he was not apprehended on the spot and it was only later on that he was arrested on 30.09.2021 and he was brought on production warrants. He further submitted that so far as the petitioner Ram Mehar is concerned, he was earlier involved in two cases, which were not under the NDPS Act but both the cases were under the IPC and Arms Act. He submitted that one case was under Sections 302, 148, 149, 120-B, 216 of the IPC and Arms Act and another case was under the Arms Act and in both the cases, he has since been acquitted. He further submitted that since there is no other evidence to link the petitioner with the present offence and his name has been surfaced on the basis of disclosure statement of a co-accused, which is not *per se* admissible evidence and, therefore, he may be considered for the grant of regular bail.

6. Learned counsel appearing on behalf of the petitioner-Sube Singh has submitted that the petitioner is having no criminal background and he was also named on the disclosure statement of the co-accused, namely, Surjeet @ Jeetu and was later on arrested on 29.04.2020. He further submitted that since the petitioner had got no link with the present offence, he may also be

considered for the grant of regular bail.

7. The custody of Surjeet @ Jeetu in the present case comes out to be about three years and seven months; custody of Ram Mehar comes out to be about one year and eleven months and custody of Sube Singh comes out to be about three years and four months. Charges have been framed on 26.02.2021 but only one prosecution witness has been examined till date.

8. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana and Ms. Harpreet Kaur, AAG, Haryana appearing in all the three cases have vehemently opposed the grant of bail to the petitioners. They submitted that a secret information was received with a specific input that petitioner- Surjeet @ Jeetu (petitioner in CRM-M-11308-2023), Sube Singh (petitioner in CRM-M-8839-2023) and one more person namely Rambir have brought some intoxicants in a vehicle and in case they can be apprehended, then large quantity of narcotics can be seized from them and acting upon the aforesaid information, the police has raided the place and apprehended Surjeet @ Jeetu. They further submitted that although the aforesaid Surjeet @ Jeetu was standing next to the canter but after fully complying with the provisions of Section 42 and Section 50 of the NDPS Act, the canter was searched from where a huge quantity of ganja, which came out to be 10 quintals, which was being carried in 50 bags was recovered in the presence of a Gazetted Officer. The petitioner-Surjeet @ Jeetu was apprehended on the spot and the driver, namely, Sube Singh, who is petitioner in CRM-M-8839-2023 along with one conductor, namely, Rambir son of Mange Ram, fled away from the spot. They further submitted that although both the petitioners Sube Singh and Ram Mehar were nominated on the basis of

disclosure statement of the co-accused Surjeet @ Jeetu but during the investigation it was found that there are number of phone calls *inter se* between the accused persons and the other co-accused, namely, Anil and Rambir and they have been doing the business jointly by which the aforesaid huge quantity of *ganja* was brought from Visakhapatnam. While referring to para No.7 of the affidavit filed in CRM-M-11308-2023, they stated that when the owner of the said vehicle, namely, Vijay Kumar was joined into investigation and then the call details of the petitioner-Surjeet @ Jeetu, co-accused Anil and co-accused Rambir were seen and details were sought along with CAIF ID and Section 65-B of the Indian Evidence Act certificate was also obtained. On the examination, it was found that the petitioner Surjeet @ Jeetu called co-accused Rambir 117 times and 57 times to co-accused Anil. Co-accused Rambir called the petitioner Surjeet @ Jeetu 44 times and 17 times to co-accused Anil. Apart from the above, the aforesaid co-accused Anil called 26 times to the petitioner Surjeet @ Jeetu and 71 times to co-accused Rambir and these phone calls were from different mobile numbers. When the petitioner namely, Ram Mehar was also arrested although on the basis of disclosure statement, he specifically gave inputs to the police that he has friendship with the other co-accused Surjeet @ Jeetu and Rambir and are friends and they know each other very well and they have all conspired with each other and collected Rs.25,00,000/- for purchasing *ganja*.

9. Both the learned State counsels have submitted that although the trial of the case is going at a slow pace but initially both the petitioners, namely, Ram Mehar and Sube Singh were absconding and the petitioner Ram Mehar

was arrested after a lapse of one year and eight months and petitioner Sube Singh was arrested after a period of two months. They further submitted that the confiscated quantity from the canter was so high that there is no ground available with the petitioners to make a departure from the bar contained under Section 37 of the NDPS Act and they have, therefore, prayed for dismissal of the present petitions.

10. I have heard the learned counsel for the parties.

11. The custody of all the three petitioners is not in dispute. It is also not in dispute that only one witness has been examined till date. The aforesaid antecedents of the petitioners are also not in dispute. There has been a recovery of 10 quintals of *ganja* from a canter from where one of the petitioners, namely, Surjeet @ Jeetu, was allegedly standing next to the canter. Petitioner Sube Singh was named in the FIR, who was the driver of the canter and allegedly he fled away from the spot, whereas, petitioner Ram Mehar was thereafter, nominated on the basis of disclosure statement of co-accused, namely, Surjeet @ Jeetu and as per both the learned State counsels, there is sufficient material available to connect the petitioner Ram Mehar in the present offence.

12. Learned counsels appearing on behalf of the petitioners have referred to the judgments of the Hon'ble Supreme Court in **Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [2023 AIR (SC) 1648]** and **Dheeraj Kumar Shukla versus The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)** to contend that long custody of the petitioners itself is a ground for considering the grant of bail. There is no doubt that long custody of an accused is a good ground for considering the grant of bail even while

considering the bar contained under Section 37 of the NDPS Act in the light of Article 21 of the Constitution of India. However, the facts and circumstances of each and every case has to be seen in its own conspectus. It is a case where there had been a recovery of very huge quantity of ganja to the extent of 10 quintals, which allegedly was brought from Visakhapatnam and was brought by way of a canter. Learned counsels for the petitioners have not been able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act. This Court is of the considered view that in the present case, the long custody of the petitioners will not be a good ground for grant of bail to the petitioners considering the peculiar facts and circumstances in the present case and the quantity of *ganja* recovered.

13. In view of the aforesaid facts and circumstances and without commenting anything on the merits of the case, all the three petitions are hereby dismissed.

14. However, considering the custody of the petitioners, this Court deems it fit and proper to direct the trial Court to expedite the trial. Accordingly, it is directed that the trial Court shall take all steps in accordance with law to expedite the trial.

15. Anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

08.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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