

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(206)

2023:PHHC:068158

1. CRM-M-10848-2022

Date of Decision: 11.05.2023

Bashir Ahmad

--Petitioner

Versus

State of Punjab

--Respondent

2. CRM-M-11101-2022

Mohammad Ayoub @ Beeru

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Ruhani Chadha, Advocate for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab.

RAJESH BHARDWAJ.J (Oral)

This common order will dispose of the aforementioned two petitions filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioners in case FIR No.100 dated 8.8.2021 under sections 15(c), 61, 85 & 29 of NDPS Act registered at Police Station, Maqsudan, District Jalandhar.

As per factual matrix, the police party received a secret information to the effect that Mohd. Ayoub @ Beeru and Bashir Ahmad (present petitioners) residents of J&K have brought heavy quantity of poppy husk from Sri Nagar and they will supply the same in Districts Jalandhar and Ludhiana in their vehicle TATA-709 bearing registration no. JK-04-7191. On receiving the secret information a Naka was laid and a truck was stopped. Two persons were found in the same. On asking the driver disclosed his name as Mohd. Ayoub @ Beeru and the young person sitting

adjoining disclosed his name as Bashir Ahmad. They were given the offer of checking their vehicle as they suspected some contraband therein. Thereafter, the vehicle was checked in the presence of D.S.P and 8 bags each weighing 25 kgs of poppy husk were recovered from the truck. The accused persons were found carrying 200 kgs of poppy husk without any licence and the present FIR was registered against them.

Both the petitioners were arrested on the spot on the same day i.e. on 8.8.2021. Thereafter, police carried out the necessary formalities of the investigation. Both the petitioners approached the court of learned Judge, Special Court, Jalandhar for grant of bail, however, after hearing the parties, the same was declined vide order dated 1.2.2022. Aggrieved by the same petitioners have approached this court for grant of bail.

Learned counsel for the petitioners vehemently contends that the case of the prosecution is based on the secret information, however, the provisions of Section 42 of NDPS Act being mandatory in nature have not been complied with by the investigating agency in the present case as the same were not reduced into writing nor any information was given to the higher officials as per mandate of the Act. He submits that recovery of 8 bags of poppy husk has been planted upon the petitioners. He further submits that after completion of investigation, challan was presented and charges were framed on 18.4.2022 but till date prosecution has not been able to examine the prosecution witnesses. Counsel has drawn attention of this court to the zimni orders of the Trial Court which would show that on maximum dates prosecution witnesses were not present before the Trial Court for their examination. It is submitted that all the prosecution witnesses are official witnesses and despite that they intentionally remained

absent from the court only in order to prolong the incarceration of the petitioners. He further submits that prosecution has not complied with the provisions of Sections 42 and 50 of NDPS Act and thus false implication of the petitioners is writ large. He submits that petitioners have no criminal antecedents and keeping in view the overall facts and circumstances of the case they deserved to be enlarged on bail.

On the other hand, learned State counsel on instructions from ASI Balbir Singh has opposed the submissions made by counsel for petitioners. He submits that a specific secret information was received regarding the petitioners and the same was conveyed to the higher officials and in pursuance to the same a Naka was laid and both the petitioners were stopped at the Naka while they were travelling in a truck which was informed by the secret informer. On checking of the truck in the presence of the D.S.P, heavy quantity of poppy husk was recovered. It is submitted that in all there are 12 prosecution witnesses out of which examination-in-chief of two prosecution witnesses has been conducted so far and the next date before the Trial Court is 30.5.2023. It is further submitted that petitioners have no criminal antecedents.

I have heard both the sides at length and have gone through the records carefully.

Admittedly, petitioners are behind bars since 8.8.2021. The alleged recovery of poppy husk was effected in pursuance to the secret information received by the police from a truck being driven by petitioner Mohd. Ayoub @ Beeru. The challan was presented and charges were framed on 18.4.2022. A bare perusal of the zimni orders produced before this court would show that in all there are 12 prosecution witnesses,

however, despite being the official witnesses they remained absent on maximum dates in the Trial Court. As per information provided by the State petitioners have no criminal antecedents. There is no denial to the fact that every accused has a right of speedy trial and the trial cannot be allowed to be prolonged without any justifiable reason. Hon'ble Supreme Court in ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260*** expressed its views as under:-

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act. 21.....it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because

in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

The case of the petitioners is covered by the ratio of law laid down by Hon’ble Supreme Court in the above said case. The veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties before it. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioners, I am of the view that learned counsel for the petitioners have been able to make out a case for grant of regular bail to the petitioners. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petitions are allowed and the petitioners are ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

**(RAJESH BHARDWAJ)
JUDGE**

11.05.2023

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