

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**Date of decision: 15.02.2023****(1) CRM-M-13791-2022 (O & M)**

Vivek Watts Petitioner

V/s

State of Punjab ...Respondent

(2) CRM-M-3741-2022 (O & M)

Manider Singh Petitioner

V/s

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Dilpreet Singh Gandhi, Advocate,
for the petitioner (in CRM-M-13791-2022).

Mr. R.K. Rana, Advocate,
for the petitioner (in CRM-M-3741-2022).

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

This order shall dispose of two petitions i.e. CRM-M-13791-2022 and CRM-M-3741-2022 as the aforesaid petitions arise out of the same FIR.

2. The prayer in the present petitions under Section 439 Cr.P.C. is for the grant of regular bail to the petitioners in case FIR No.163 dated 15.11.2021 under Section 21 of the NDPS Act, 1985 registered at Police Station Balongi, District SAS Nagar, Mohali.

3. The brief facts of the case are that the police party received a

M-13791-2022) and Maninder Singh @ Maninder Singh (in CRM-M-3741-2022) were indulging in the business of selling of Cocaine. They were coming in a Baleno car, colour silver bearing temporary registration No.T0821CH9600A. If a *naka* was led, they could be apprehended.

Based on the said information, the FIR came to be registered against the said accused.

4. Pursuant thereto, a naka was laid and the two accused, namely, Vivek Watts @ Vivek Vatts and Maninder Singh @ Maninder Singh were apprehended while travelling in the aforesaid vehicle. Accused-Maninder Singh @ Maninder Singh was driving the vehicle whereas the accused-Vivek Watts @ Vivek Vatts was sitting on the adjoining seat. From the personal search of Vivek Vatts @ Vivek Watts, one polythene containing Cocaine was recovered which on weighing was found to be 104 grams. No contraband was recovered from Maninder Singh @ Maninder Singh.

5. The learned counsel for the petitioner-Vivek Vatts @ Vivek Watts contends that the petitioner has been falsely implicated in the present case on account of his participation in the Farmers' protest. There has been non-compliance of Section 42 and 50 of the Act and therefore, the search and seizure stood vitiated. Since the recovery from the petitioner was 104 grams of Cocaine, which was marginally above the quantity of 100 grams, the petitioner was entitled to the grant of bail as he was in custody since 15.11.2021 and only 01 out of the 16 prosecution witnesses had been examined so far.

6. The learned counsel for the petitioner-Maninder Singh @ Maninder Singh, in addition, states that since the recovery was effected from the person of co-accused Vivek Watts @ Vivek Vatts, the petitioner cannot

be said to be in conscious possession of the same. He, therefore, prays for the grant of bail to the petitioner-Maninder Singh @ Manider Singh.

7. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband has been recovered from the petitioners. Therefore, they were not entitled to the concession of bail in view of the bar under Section 37 of the NDPS Act.

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

9. Admittedly, taking the prosecution case to be true, 104 grams of Cocaine has been recovered from the petitioner-Vivek Vatts @ Vivek Watts, which is marginally above the commercial quantity of 100 grams. So far as the petitioner-Maninder Singh @ Manider Singh is concerned, no recovery has been effected from him, and therefore, it would be a matter of adjudication during Trial as to whether he could be said to be in conscious possession of the same. The petitioners are stated to be in custody since 15.11.2021 and only 01 out of the 16 prosecution witnesses have been examined so far. They are also first-time offenders. Therefore, in the facts and circumstances of the present case, the rigors of Section 37 of the NDPS Act can be relaxed to an extent and the petitioners can be granted the concession of bail.

10. Thus, without commenting upon the merits of the case, the present petitions are allowed and the petitioners, namely, Vivek Watts @ Vivek Vatts and Manider Singh @ Maninder Singh are ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

11. The petitioners shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish

an affidavit each time that they are not involved in any case other than the present one.

12. In addition, the petitioners (or someone on their behalf) shall prepare an FDR in the sum of Rs.1,00,000/- each and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioners from trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

February 15, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No