

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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(i) CRM-M-14952-2022
Date of decision : 23.02.2023

Jagga Singh Petitioner

V/S

State of Punjab Respondent

(ii) CRM-M-50414-2022 (O&M)
Date of decision : 23.02.2023

Kesar Singh Petitioner

V/S

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Krishan Kanha, Advocate
for the petitioners.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

This order will dispose of CRM-M-14952-2022 and CRM-M-50414-2022 as the same arisen out of the common FIR.

The petitioners have filed the present petitions under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.16 dated 05.02.2021 registered under Sections 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Barnala, District Barnala.

Custody certificates dated 22/21.02.2023 have been filed by learned State counsel in the Court today which are taken on record.

Brief facts of the case are that the above-said FIR was registered on the basis of secret information received by the police. On 05.02.2021, the police apprehended the petitioners along with their Alto car bearing Registration No.PB19S-5660 and on conducting search of their car, one plastic bag containing 1200 strips of intoxicant tablets mark RADOL-100 containing 10 tablets each (total 12000 tablets) were recovered. During the investigation of the case, the petitioners disclosed that they have purchased the alleged intoxicant tablets at the rate of Rs.2500/- per box from one Rimpay Kaur.

Learned counsel for petitioners submits that the petitioners have been falsely implicated in the present case. The alleged recovery has been planted upon the petitioners. The petitioners have been illegally arrested from their houses and the whole story has been concocted by the police party. Mandatory provisions of NDPS Act were not complied with by the police. No independent witness was joined by the police at the time of alleged recovery. The petitioners were arrested on 05.02.2021 and for the last more than 02 years they are in custody. Out of total 14 prosecution witnesses only 03 have been examined so far. Most of the prosecution witnesses are yet to be examined and the trial is moving at snail's pace which is not likely to be concluded in near future. No useful purpose will be served by further detention of the petitioners in custody. Therefore, the petitioners may be released on regular bail.

On the other hand learned State counsel has vehemently opposed the present petition in terms or reply dated 10.05.2022 filed in CRM-M-14952-2022 and submits that huge quantity 12000 intoxicant tablets, which falls in the category of commercial quantity, were recovered from the petitioners without any license or permit. The antecedents of the petitioners are also not good. Petitioner-Jagga Singh has already been convicted in 02 other cases under the NDPS Act and petitioner-Kesar Singh is also involved in 01 other case under the NDPS Act. Therefore, the petitioners do not deserve the concession of regular bail.

I have heard learned counsel for the parties and gone through the paper-book.

Admittedly, a huge quantity of 15000 intoxicant tablets were recovered from the petitioners which falls in the category of commercial quantity. Section 37 of the Act provide a stringent provisions for grant of bail in cases of involving commercial quantity. Hon'ble Supreme Court in ***Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022,*** held as under:

"10. The provisions of Section 37 of the NDPS Act read as follows:

"[37. Offences to be cognizable and non-bailable.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –
(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for [offences under
section 19 or section 24 or section 27A and also for offences

involving commercial quantity] shall be released on bail or on his

own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]

12. The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In **“Collector of Customs, New Delhi v. Ahmadaliev Nodira”**, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. **The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.**”

[emphasis added]

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18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the chargesheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act."

The allegations against the petitioners are very serious in nature which needs no leniency at this stage. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking. The Hon'ble Apex Court in case ***State of Punjab Vs. Baldev Singh : 1999 AIR SC 2378*** has observed regarding Drug Addiction, Drug abuse and its effect on the society. The Hon'ble Apex Court in para No.3 has observed as under:-

“3. Drug abuse is a social malady. While drug addition eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Australia in 1988

was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this convention.”

The aforesaid ratio of law has also been reiterated by the Hon'ble Supreme Court recently in ***Sri Thaha Ummer Vs. Union of India, Criminal Petition No.9450/2022 decided on 09.11.2022.***

So far as, the argument of learned counsel for the petitioners that the petitioners are in custody for last more than 02 years is concerned, Hon'ble Supreme Court in its judgment passed in Narcotics Control Bureau Versus Mohit Aggarwal, Crl.A. No.1001-1002 of 2022, decided on 19th July, 2022 has observed that custody period itself alone cannot be a ground for grant of bail.

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that the alleged contraband recovered from the petitioners falls in the category of 'commercial' quantity which attracts rigors of Section 37(1)(b) of the NDPS Act and the fact that the antecedents of the petitioners are also not good, I am of the considered view that the petitioners do not deserve the concession of regular bail.

The present petitions are dismissed accordingly.

23.02.2023
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(ASHOK KUMAR VERMA)
JUDGE

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