

**204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-19957-2022
Date of Decision: 16.02.2023

Jaspal Singh @ Kalu Petitioner
Versus
State of PunjabRespondent

CRM-M-10469-2022

Sham Charan @ Shama Petitioner
Versus
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Yashpal Thakur, Advocate and
Mr. B.S. Mamli, Advocate, for the petitioners.
Mr.Sandeep Kumar, Deputy Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

This order will dispose of both the petitions mentioned above
as both the petitions have arisen out of a common FIR.

Prayer in the present petitions is for the grant of regular bail to
the petitioners in a case FIR No.161 dated 27.10.2020, registered under
Section 22 of NDPS Act, at Police Station Bassi Pathana, District Fatehgarh
Sahib.

Adumbrated facts of the case are that the present FIR was
lodged by ASI Gurbachan Singh alleging therein that when he was
patrolling alongwith his team on 27.10.2020, he received a secret
information that Shyam Charan @ Shama and Jaspal Singh @ Kalu (the
petitioners) who used to sell intoxicant tablets at cheaper rate, are coming
from Morinda side to Fatehgarh Sahib on their motorcycle bearing No.PB-

23-P-7642. On the basis of the secret information, FIR under Sections 22/61/85 of NDPS Act was registered and Ruka was sent through Sepoy Gurpreet Singh to Police Station Bassi Pathana. Thereafter, Naka was laid and both the petitioners were arrested on the spot. Accused Shyam Charan @ Shama was driving the motorcycle, whereas, accused Jaspal Singh @ Kalu was riding pillion. On search from Shyam Charan @ Shama, 4000 tablets were recovered from right pockets of his pant and 3000 tablets were recovered from his left pocket. The pillion rider i.e. Jaspal Singh Kalu was carrying a bag in his hand, from which total 3375 intoxicant tablets were recovered. The samples were taken from the recovered contraband and sent to the FSL for their examination. The necessary formalities for the investigation were carried out. After having been arrested on spot, the petitioners have approached the Court of learned Judge, Special Court, Fatehgarh Sahib, for grant of bail, who, after hearing the parties, declined the bail of Sham Charan @ Shama and Jaspal Singh @ Kalu vide orders dated 31.12.2020 and 04.05.2021, respectively. Aggrieved by the same, the petitioners have approached this Court by way of filing the present petition for grant of bail.

It has been vehemently contended by learned counsel for the petitioners that the petitioners have been falsely implicated in the present case. It is submitted that there is a clear violation of the mandatory provisions of Section 42 of NDPS Act. It is submitted that the case of the prosecution is based on a secret information, however, the same was not reduced into writing and was never sent to the higher official as per the mandate of the statutory provisions and the law settled and thus, there is a violation of the mandatory provisions of Section 42 of the NDPS Act. It is

further submitted that from Shyam Charan @ Shama the recovery is from his pocket, i.e. the personal search and there is violation of Section 50 of the NDPS Act as well. Learned counsel for petitioner Jaspal Singh @ Kalu has also argued on the same line that the mandatory provisions of Section 42 and that of Section 50 of the NDPS Act, which are mandatory in nature, are not complied with. It is submitted that the petitioners are not habitual offenders and they have completed about 2½ years behind the bars. It is also submitted that the Investigating Agency has shown the recovery of various tablets, whereas, samples have been taken and thus, the petitioners are falsely implicated for the recovery of commercial quantity. It is submitted that in the facts and circumstances, the petitioners deserve to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioners. On instructions from ASI Prithiraj Singh, he has submitted that secret information was received, which was duly reduced into writing and conveyed to the higher officials and thus, there was a total compliance of Section 42 NDPS Act. He has also submitted that search was conducted from the petitioner after giving them offer under Section 50 of NDPS Act and the same conducted in the presence of the gazetted officer and thus, compliance of Section 50 of NDPS Act was also done and thus, there was no violation of provisions of Sections 42 and 50 of NDPS Act. He submits that as per the instructions, petitioner Shyam Charan @ Shama is also facing prosecution in another case pertaining to Gambling Act, however, is he on bail in that case, whereas, there is no case against petitioner Jaspal Singh @ Kalu. He has submitted that in all there are 14 prosecution witnesses, out of which 2

witnesses have been examined. He has placed on record the custody certificate, which would show that the petitioners have completed incarceration of 2 years 3 months 18 days as on 15.02.2023.

Heard.

Needless to say that the petitioners were arrested on the spot and on search from Shyam Charan @ Shama, 7000 intoxicant tablets and from Jaspal Singh @ Kalu 3375 intoxicant tablets were recorded. As per FSL report, weight of contraband Diphenoxylate Hydrochloride comes to be 196.8 grams, which is commercial in nature. So far contraband Alprazolam is concerned, the same weighs 67.5 grams, which is non-commercial and contraband Tramadol Hydrochloride weighs 102 grams, which is also non-commercial. It is not under dispute that the petitioners have completed 2 years, 3 months and 18 days of incarceration. Whether there is violation of Sections 42 and 50 of NDPS Act, the same would be evaluated by the learned trial Court on the conclusion of the trial after appreciation of evidence led by both the parties before it. Petitioner Jaspal Singh @ Kalu is not involved in any other case, whereas, petitioner Shyam Charan @ Shama is concerned, there is another case against him under the Gambling Act, in which he is already on bail. 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.

16.02.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No