

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: August 01, 2023

1. CRM-M-22116 of 2023

Bholi	...Petitioner
Versus	
State of Punjab	...Respondent

2. CRM-M-26852 of 2023

Rohit Kumar	...Petitioner
Versus	
State of Punjab	...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Gagandeep Singh Simble, Advocate
for the petitioner in CRM-M-22116 of 2023.

Ms. Taranjit Kaur Hundal, Advocate
for the petitioner in CRM-M-26852 of 2023.

Mr. R.S. Khaira, DAG, Punjab.

DEEPAK GUPTA, J.

This order shall dispose of two petitions as both of them arisen out of the same FIR. In both the petitions, petitioners pray for grant of regular bail in case FIR No.298 dated 22.11.2022 registered under Sections 21, 27 and 29 of the NDPS Act, 1985 at Police Station STF Wing, District Mohali.

Separate status reports by way of affidavit of Shri Devinder Kumar, Deputy Superintendent of Police, Special Task Force, Ludhiana Range, Ludhiana on behalf of the respondent- State have been filed, in both the petitions. Custody certificates of both the petitioners have also been placed on record by learned State Counsel.

Allegations are that a police party received a secret information on 22.11.2022 that Harjinder Kumar, Sub Inspector in Punjab Police posted as Additional SHO at Police Station Division No.5, Ludhiana indulged in selling heroin and on that day also, he was likely to come from the side of Ladhuwal in police uniform to supply heroin to his customers. Necessary compliance under Section 42 of the NDPS Act was made. Naka was laid. Harjinder Kumar came in the police uniform. Provisions of Section 50 of NDPS Act were complied with. His search resulted in recovery of 16 grams of heroin. He was arrested and during his examination, he suffered disclosure statement that he had purchased the recovered contraband from Harjinder Kaur and Rohit Kumar (petitioner in CRM-M-26852 of 2023). Harjinder Kaur and Rohit Kumar were nominated as accused under Section 29 of the NDPS Act and were arrested on 23.11.2022 on Motor-cycle No.PB-08BK-8133. On search of Harjinder Kaur, 830 grams of heroin was recovered from her ladies purse in a polythene. Their dope test was also found to be positive and so, Section 27 of the NDPS Act was added. Both these co-accused i.e. i.e. Harjinder Kaur and Rohit Kumar suffered respective disclosure statements as per which they had purchased the contraband from Bholi (petitioner in CRM-M-22116 of 2023). Said petitioner Bholi was nominated as an accused and arrested on 06.03.2023. The FSL report confirmed that the recovered substance was “*Diacetylmorphine*”, i.e. *Heroin*.

It is contended on behalf of Bholi (petitioner in CRM-M-22116 of 2023) that she had been arrested on 28.02.2023 and that 20

grams of heroin was recovered from her. Said recovery is based upon the disclosure statement, the veracity of which is to be tested during trial. It is submitted further that co-accused Harjinder Kumar, from whom 16 grams of heroin was recovered, has already been granted the concession of regular bail. Petitioner – Bholi is stated to be involved in two more cases.

On behalf of petitioner – Rohit Kumar, it is contended by learned counsel that no recovery was effected from him; that he was only driving the motor-cycle on which co-accused Harjinder Kaur was riding as a pillion and it is from said Harjinder Kaur that recovery of 830 grams of heroin was effected. It is further submitted that petitioner – Rohit Kumar is not involved in any other case and has been implicated simply on the basis of disclosure statement and so, he be allowed bail.

Strongly opposing both the bail petitions, it is stated by learned State Counsel that it is a case of total recovery of 846 grams of heroin, out of which 830 grams of heroin was recovered from petitioner – Rohit and his co-accused Harjinder Kaur. Learned State Counsel further submits that it is being wrongly pleaded on behalf of petitioner – Bholi that 20 grams of heroin was recovered from her and in fact no recovery was effected from her in this case and that she has been nominated on the basis of disclosure statement being supplier of the contraband.

As far as petitioner- Bholi is concerned, it is the own case of the prosecution that no recovery has been effected from her. She has been nominated on the basis of disclosure statement of co-accused Harjinder Kaur and Rohit. Though she is involved in two more cases

pertaining to NDPS Act as per the custody certificate, but criminal antecedents cannot be used to decline bail in this case considering that no recovery has been effected from her in this case.

Said petitioner – Bholi is in custody for the last 04 months and 14 days. Trial may take time to conclude. Co-accused Harjinder Kumar from whom recovery of 16 grams of heroin was effected, has already been allowed bail by a co-ordinate Bench of this Court vide order dated 27.04.2023 in CRM-M-11240 of 2023.

Having regard to the afore-said facts and circumstances of the case, but without commenting anything on the merits of the case, Bholi (petitioner in CRM-M-22116 of 2023) is allowed bail and is directed to be released on bail on her furnishing requisite personal bail bonds and surety bonds to the satisfaction of the trial Court/ Duty Magistrate concerned.

As far as petitioner - Rohit is concerned, he along with co-accused Harjinder Kaur were found to be in possession of 830 grams of heroin which falls under commercial category. Rigour of Section 37 of the NDPS Act are clearly applicable to the case. As such, he is held to be not entitled to the bail. Bail petition qua Rohit (petitioner in CRM-M-26852 of 2023) is dismissed.

A photocopy of this order be placed on the file of connected case.

August 01, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No