

CRM-M-23793-2023(O&M) AND
CRM-M-15321-2023 (O&M)

212 (1st and 2nd case)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: September 06, 2023

1. CRM-M-23793-2023 (O&M)

Soeb @ Mohammad Soeb

....Petitioner

versus

State of Haryana

....Respondent

2. CRM-M-15321-2023 (O&M)

Lakhpat

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sandeep S. Majithia, Advocate for the petitioner
in CRM-M-23793-2023.

Mr. Balraj Gujjar, Advocate for the petitioner
in CRM-M-15321-2023.

Mr. Vikas Bhardwaj, AAG Haryana and
SI Navdeep No.D-5836, P.S. Special Cell, Delhi.

ARUN MONGA, J. (ORAL)

Vide this common order, above-mentioned two bail petitions, arising out of the same FIR, are being disposed of. For brevity, recitals/facts are from CRM-M-23793 of 2023.

2. After being declined bail by the trial Court, petitioners, before this Court seek their release as undertrials in a case bearing FIR No.0108 dated 01.03.2022, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Sections 25 and 27 of the Arms Act, 1959 (for short 'Arms Act'), at Police Station, Hodal, District Palwal.

3. Per prosecution version, on 01.03.2022, ASI Rajesh Kumar along with other police officials were on duty Hassanpur Chowk, Hodal, Palwal. They had secret information that a truck bearing registration No. RJ-20-GB-8399 was being driven by Mohammad, accompanied by his associate Ashif. They were en-route and were being piloted by a Verna

car with registration No. HR-96-3618. Inside the Verna car were Lakhpat (the petitioner in

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CRM-M-15321-2023), Soeb (the petitioner in CRM-M-23793-2023), Ash Mohd, and Toffik. The confidential source further informed that these individuals were engaged in the transportation of *ganja patti*. To intercept them, a temporary barricade was set up at Karman Border, Hodal. An intimation was sent under Section 42 of the NDPS Act. After a while, the Verna car arrived and was stopped. All four occupants were subdued, and the car was secured separately under the supervision of a Head Constable. Subsequently, the truck with registration No. RJ-20-GB-8399 arrived, and two individuals from the truck were also apprehended. The driver identified himself as Mohammad, the son of Abdul, hailing from Khedli Nanu, District Rajasthan, and the co-driver identified himself as Aashif, the son of Bashir, from Babupur, Tehsil Hathin, District Palwal. A notice under Section 50 was issued, and they requested that the search be conducted in the presence of a Gazetted Officer. Sh. Sanjiv Nagar, Tehsildar, Hodal, was informed and arrived at the scene. Upon searching the truck, 44 bags were discovered, concealed under coconuts, containing a total of 1369 kilograms and 300 grams of *ganja patti*, which was subsequently seized. The individual seated in the driver's seat of the car identified himself as Soeb (the petitioner), the son of Gore Khan, residing in Sultanpur, Tehsil Nagina, District Nuh. All other suspects, including petitioner Lakhpat, were also taken into custody. Additionally, a pistol and three rounds were found on the car's dashboard, which were duly sealed and confiscated.

An FIR was registered. Petitioners were arrested and they are in custody since 01.03.2022.

4. Petitioner in CRM-M-23793-2023 is serving as an Assistant Sub Inspector in Delhi Police. His counsel would contend that petitioner had sought permission from his superior to leave the station to carry out a covert operation as an undercover. He further contends that petitioner was enrolled in Delhi Police as a Constable and owing to his hard-work and sincerity was given two out-of-turn promotions. Petitioner had secret information about the contraband in question and after seeking permission from the Special Cell, New Delhi, where petitioner was deployed, he left for Delhi, on 17.02.2022.

4.1. Learned counsel further submits that in such type of offences, petitioner had to get in touch with various criminals so as to obtain information. He further argues that contraband in question was originally dispatched from Orissa and petitioner was on a pursuit to crack the case. He further points out that the permission dated 17.02.2022 is contained at Annexure P-

3.

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4.2. He further submits that petitioner was practically trapped and framed in the case in hand. While he was in a bid to apprehend the truck in question, he was got apprehended by his informer itself, the informer double crossed and got him apprehended by the Haryana Police. He also contends that movement of contraband started from Orissa and had it reached all the way to Haryana. Allegation against the petitioner is that he was piloting the said truck. There is nothing on record to show that from where to where he was supposed to pilot the truck and why would he pilot the truck in Haryana, especially when he had no links over there.

4.3. No offence under the Arms Act is made out against the petitioner since he was admittedly carrying and was apprehended with his official weapon. Nothing else was recovered from him. The only link evidence, which is being relied upon by the prosecution is that a week prior to the registration of case in hand, petitioner had a telephonic conversation with one Asif i.e., the occupant of truck carrying alleged contraband. He would contend that, if at all so, same was in his pursuit to nab them. It is also the allegation against the petitioner that he was in possession of two other numbers i.e., 9093984190 and 8053765400, but none of these numbers were purchased by the name of petitioner and are not in any way linked with him, he would further contend.

4.4. Learned counsel for the petitioner in CRM-M-23793-2023 would further contend that there is no material evidence that petitioner is having any concern with the other co-accused as there was no transaction of any sort between them. Allegation against the petitioner is only based on his disclosure statement and the same is not admissible in evidence. He also contends that intimation regarding secret information was sent to the senior officials, after registration of FIR in question. Secret information was received by S.I. Rajesh Kumar, C.A. of C.I.A. Staff, Hodal, who is not entitled to conduct investigation. He also submits that car in question does not belong to the petitioner. No recovery of any alleged contraband or weapon was made from the person of the petitioner. One pistol and three live cartridges were allegedly recovered from the dashboard of the car and the same cannot be termed as a conscious possession. Learned counsel further contends that despite such a heavy alleged recovery and having a prior secret information, no independent witness was joined by the police.

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5. Learned counsel for the petitioner in CRM-M-15321-2023 would contend that only allegation against the petitioner is that he was companion of co-accused, namely Soeb @ Mohammad Sobeb, who is an ASI. He further contends that there is non-compliance of Section 42 of the NDPS Act. He submits that alleged notice under Section 42 of NDPS Act attached with the challan shows that same was for search of only the offending truck. No notice for the search of other vehicle i.e., Varna car, was given. Allegedly contraband was recovered from the truck in question. Petitioner was not found in conscious possession of alleged contraband. There is no material evidence to show complicity of the petitioner with the alleged contraband and involvement in commission of alleged offence, except disclosure statement, which is *per se* not admissible evidence. He also contends that there is non-compliance of Section 50 of the NDPS Act.

6. Learned counsels further contend that nothing is to be recovered from the petitioners now and they are not required for further custodial interrogation. False implication of petitioners cannot be ruled out. There is no likelihood of petitioners tampering with evidence and/or influencing prosecution witnesses. Petitioners are not involved in any other case.

7. On the other hand, learned State counsel opposes the bail petition. He submits that petitioners have committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is likelihood of petitioners fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

8. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. Vide order dated 07.08.2023 passed in CRM-M-23793-2023, on oral request of counsel for the petitioner, ACP, Special Cell, Southern Ranges, Pushp Vihar, Saket, New Delhi was made a party to the petition, and a report was sought with respect to averments contained in the petition and whether the petitioner-Soeb had sought permission from his superior to leave the station to carry out covert operation as an undercover. Likewise, a specific report by the prosecution was also sought with regard to authenticity of document contained at Annexure P-3, which reflects that Soeb had indeed sought permission on the basis of secret information to go out of station in a private vehicle.

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7.1. *Apropos*, SI Navdeep, No.D-5836, P.S. Special Cell, Delhi is present in the Court today. He has tendered an affidavit/ report dated 05.09.2023, which is taken on record as Annexure 'X'. Copy thereof has been supplied to counsel opposite. Following stand has been taken in the said report:-

"3. That the petitioner, on 17.02.2022 had informed to Inspector Shiv Kumar (Team In-charge) that he had information about some Mewat based wanted criminals indulging in drugs trafficking, ATM uprooting etc. He was asked by Inspector Shiv Kumar to develop this information discreetly.

4. That the petitioner, Soeb @ Mohammad Sob had sought permission to leave the station for developing secret information through proper channel as per rule. (Annexure -P-3 in question)

5. That the petitioner, Soeb @ Mohammad Sob departed from this office to go out of station vide DD No. 6 dated 17.02.2022 for developing secret information after taking necessary permission. (True Copy of DD entry annexed as Annexure - R-2/1 for kind perusal of this Hon'ble Court)

6. That the petitioner, Sob @ Mohammad Sob had used to brief Inspector Shiv Kumar (Team In-charge) about the information gathered about the Mewat based criminals/personnel who used to indulged in criminal activities in Delhi NCR and adjoining States and Inspector Shiv Kumar used to guide him as per law."

7.2. From the perusal of above, it is clearly borne out that in terms of Annexure P-3, petitioner had intimated his superior and sought permission to leave the station for further action based on secret information.

7.3. Further, pursuant to aforesaid order dated 07.08.2023 passed by this Court, status report of learned Additional District and Sessions Judge-(I), Palwal has also been placed on record, which is contained at Flag 'A'. The said report reveals that it is the prosecution which has been delaying the trial as prosecution witnesses are not appearing for recording their testimony as is borne out from the report *ibid*. Relevant of the same is reproduced herein below:-

"On 07-07-2023, No PW were present. The case was adjourned to 25-08-2023 for issuing bailable warrants of SI Rajesh Kumar, Kherun Nisha, Sanjeev Nagar (Tehsildar) and Nodal Officer of Vodafone and Pw's at serial No. 22, 23, 24 & 25 were also ordered to be summoned.

On 25-08-2023, two PW Sanjeev Nagar (Tehsildar) and SI Rajesh Kumar were present and examined as PW5 & PW6. No other PW's were present. An application for exemption of witness Kherun Nisha was filed through her counsel stating that her mother-in-law was expired three days before. The application was duly supported by affidavit. In view of the contents of the application, the appearance of witness Kherun Nisha was exempted. It was ordered to issued fresh bailable warrant against her. Witnesses Nodal Officer JIO, Nodal Officer AIRTEL and Registration Clerk RTO were not turned up despite being served personally and served through official. It was ordered to issue bailable warrants against them. Bailable warrant issued against Nodal Officer, Vodafone received back unserved. It was ordered to issued fresh bailable warrant against him. Further, witnesses at serial No.13, 18, 24 & 28 were also ordered to be summoned for the date fixed, i.e. 05-10-2023."

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7.4. On a Court query, learned State counsel submits that challan was filed way back on 29.08.2022 and charges were framed on 05.09.2022. Investigation is complete and petitioners are thus not required for custodial interrogation.

8. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. On a Court query, learned State counsel, on instructions from ASI Mahanand, submits that out of total 27 witnesses, 05 have been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioners have already been languishing in jail for the last more than 01 year and 06 months, being behind bars since 01.03.2022.

9. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if they are let out, they may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the trial Court to which accused has no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

10. Offence allegedly committed by petitioners are of non-violent nature and in that sense their release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioners are matter of trial. At this stage, there appears to be a reasonable ground that petitioners may not be guilty of the alleged offence. They are not likely to commit any offence while on bail.

11. Petitioner-Soeb @ Mohammad Soeb is stated to be a 33-year old working in Delhi Police. Petitioner-Lakhpat is stated to be 35-year old agriculturist. Being family men and having fixed abode, it is unlikely that they pose any flight risk and/or will flee from the trial proceedings.

12. Considering the overall scenario and without commenting on the merits of the case, the instant petitions are allowed. I am of the view that no useful purpose would be served to keep the petitioners in further preventive custody.

13. Accordingly, petitioners are ordered to be released on bail, in case not required in any other case, on their furnishing bail bonds and surety bonds to the satisfaction of

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learned trial Court, where their cases are being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

14. In case, petitioners are found involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant cases.

15. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

16. Learned trial Court is further directed to proceed in the matter as expeditiously as possible and to take appropriate action, if warranted, in terms of the Standard Operating Procedure (SOP) of the State as detailed in order/judgment dated 28.08.2023 passed by this Court in IOIN-CRM-M-18507-2022 titled “Jagjit Singh@ Jaggi Vs. State of Punjab.” Guidelines and SOP were ordered to be circulated by this Court to learned Judges in the District Judiciary in the States of Punjab, Haryana and UT Chandigarh.

17. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 06, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No