

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

226 CRM-M-26619-2023 (O&M)
Date of decision: 05.09.2023

Gurjeet Singh @ Happy ..Petitioner
Versus
State of Punjab ..Respondent

CRM-M-27656-2023 (O&M)
Manjinder Singh ..Petitioner
Versus
State of Punjab ..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Ankush Rampal, Advocate
for the petitioner in CRM-M-26619-2023.

Mr. Jaskirat S. Dhaliwal, Advocate
for the petitioner in CRM-M-27656-2023.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petitions filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioners in FIR No.38 dated 03.03.2023, registered under Section 15(b) of NDPS Act, at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib.
2. Learned counsel contends that petitioners are in custody for last 6 months. The alleged recovery from them is non-commercial, it being 20 kg. and 500 gms. of poppy husk. The petitioner-Gurjeet Singh @ Happy was shown to be sitting on the co-driver seat of the vehicle whereas, petitioner-Manjinder Singh was standing outside. It is debatable

issue as to whether alleged recovery was from conscious possession of the petitioners as the same was effected from the car. There is non-compliance of mandatory provisions of Section 50 of NDPS Act. No independent witness has been joined at the time of recovery. Petitioner-Manjinder Singh is involved in one more case and petitioner-Gurjeet Singh is involved in two more cases of NDPS Act involving non commercial quantity wherein they are on bail. Reliance is placed on the judgment of Hon'ble The Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382. Co-accused-Kuldeep Singh, driver of the vehicle, has been granted interim bail vide order 26.04.2023, Annexure P2. Charges were framed on 01.09.2023 and none out of 13 witnesses has been examined.

3. The custody certificates dated 02.09.2023, filed by learned State counsel are taken on record, as per which, the petitioners are behind bars for last 6 months.

4. Learned State counsel opposes the bail on the ground that the petitioners were apprehended at the spot. He is however unable to controvert the submissions made regarding the stage of the case, petitioners being on bail in other cases, co-accused has been granted bail and the recovery effected being non-commercial.

5. Heard.

6. Hon'ble The Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, "As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged

and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.” Reiterating in **Prabhakar Tewari vs. State of UP and another**, (2020) 11 SCC 648, it was observed that, “The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail.”

7. Considering the facts and circumstances of the case, in particular that the petitioners are in custody for 6 months; on bail in other cases; co-accused has been granted interim bail; alleged recovery is non-commercial quantity, therefore, rigors of Section 37 of NDPS Act are not attracted in the present case; charges were framed on 01.09.2023 and out of 13 prosecution witnesses, none has yet been examined; the trial is likely to take a considerable time, thus their further incarceration would not serve any useful purpose, the present petitions for grant of regular bail deserve to be allowed.

8. As a result, the present petitions are allowed. The petitioners are ordered to be released on regular bail, subject to their furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to their not being required in any other case. The petitioners shall abide by the following conditions:-

- (i) The petitioners will not tamper with the evidence during the trial.
- (ii) The petitioners will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioners will appear before the trial Court on each and every date fixed, unless are exempted by a specific order of Court.
- (iv) The petitioners shall not commit an offence similar to the offence of which, they are an accused, or for commission of which they are

suspected of.

- (v) The petitioners shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
- (vi) The petitioners shall not in any manner misuse their liberty.
- (vii) The petitioners shall furnish their address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioners seek to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
- (viii) The petitioners shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioners.

11. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioners by this order.

9. In view of the above, it is clarified that the observations made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

10. Photocopy of this order be placed on the connected file.

05.09.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No