

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(217)

CRM-M-28226-2023
Date of decision:- 08.12.2023

Gautam Kalita and another ... Petitioners
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. S.P.S.Chakkal, Advocate
for the petitioners.

Mr. A.P.S.Tung, DAG, Punjab.
for State-respondent.

SUVIR SEHGAL, J. (ORAL)

1. Instant petition has been filed under Section 439, Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
116	14.04.2023	Derabassi, District SAS Nagar	18 of the NDPS Act

2. Case of the prosecution is that FIR, Annexure P-1, has been registered on the basis of secret information that Gautam Kalita, petitioner No.1, and Dilip Kalita, petitioner No.2, who are involved in the sale and purchase of intoxicating substance, are coming from Assam to Jawaharpur area of Punjab. A barricade was set up, petitioners were apprehended and recovery of 1 kg opium was effected from a polythene bag carried by Gautam Kalita and 1.5 kg opium was recovered from the person of Dilip Kalita.

3. Counsel for the petitioners contends that the petitioners have been falsely implicated. He submits that there is a violation of mandatory provisions laid down under Sections 42 and 50 of the NDPS Act. Still further, by placing reliance upon the judgment of the Supreme Court in ***Amar Singh Ramjibhai Barot Versus State of Gujarat (2005) 7 SCC 550*** as well as judgment passed by this Court in ***Amit Dhanak Versus State of Haryana (CRM-M-33684-2020*** decided on 11.01.2021), it has been contended that the recovery has to be calculated individually. Counsel asserts that the petitioners have a clean past and are in custody since 17.04.2023 and they are no longer required for custodial interrogation as investigation is complete and challan has been presented.

4. *Per contra*, State counsel, upon instructions from ASI, Barinder Singh, has opposed the petition and submits that the total recovery effected from the petitioners is 2.50 kg opium, which is the threshold limit of commercial quantity and rigor of Section 37 of the NDPS Act would apply. He has filed separate Custody Certificates dated 07.12.2023 of both the petitioners, which are taken on record. As per his specific instructions, charge was framed in July, 2023, but no prosecution witness has been examined.

5. I have heard counsel for the parties and considered their respective submissions.

6. In ***Amar Singh*** (supra), the Apex Court has held that recovery effected from the accused cannot be clubbed till the time it is not established that there was some complicity or conspiracy between them. This aspect would remain a subject matter of debate and determination by

the Trial Court. Individual recovery from both the petitioners, falls in the intermediate quantity and the concession of regular bail deserves to be extended to them, more particularly as they enjoy clean antecedents and the trial is at a nascent stage.

7. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioners are ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.

8. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

08.12.2023

Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No