

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

CRM-M-32658-2021

Date of Decision: 02.05.2023

JAGJEET SINGH @ JAGGA AND ANOTHER ...Petitioners

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ajaypal Singh Sandhu, Advocate
for Mr. P.K.S. Phoolka, Advocate
for the petitioners.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

Petitioners (Jagjeet Singh @ Jagga and Major Singh) have filed this petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No. 109 dated 24.06.2021 (Annexure P-1), under Section 15(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), registered at Police Station Sangat, District Bathinda (Punjab).

2. Reply by way of an affidavit of Sh. Gurdeep Singh, PPS, Deputy Superintendent of Police (Rural), Bathinda, District Bathinda, on behalf of respondent-State of Punjab, has been filed, which is already on record.

3. Succinctly, the above-mentioned case FIR was registered on the complaint of Sub Inspector Major Singh, who stated that on dated 24.06.2021, he alongwith fellow employees was present at Bus Stand of village Pathrala in a government vehicle for search and checking of suspicious persons, when at about 3:30 p.m. he received information on phone from ASI Darshan Singh that he alongwith fellow policemen

while patrolling, have apprehended two persons namely, Jagjeet Singh @ Jagga Singh and Major Singh son of Ajit Singh alongwith Tralla bearing No. PB03X-9395 alongwith poppy husk; whereupon Sub Inspector Major Singh and other official reached at the spot and in the meanwhile Manpreet Singh son of Jagsharan Singh resident of Doomwali also reached at the spot. It was stated that after enquiring about the details of the apprehended persons, they revealed their names as Jagjeet Singh @ Jagga and Major Singh. Upon carrying out search in presence of witnesses, four plastic bags kept on the coal in the horse tralla (PB03X-9395) in possession of Jagjeet Singh and Major Singh was checked and poppy husk was found in the bags, which upon weighing came out to be 20 kgs. (each) alongwith plastic bag. Tralla (PB03X-9395) was in the name of Buta Singh son of Chand Singh. Total 80 kgs.poppy husk was stated to have been recovered from the possession of Jagjeet Singh and Major Singh. Accordingly, the abovesaid FIR was registered and petitioners were arrested.

4. The petitioners thereafter applied for regular bail before the Judge, Special Court, Bathinda; which was dismissed on 29.07.2021. Accordingly, the present petition has been filed by the petitioners before this Court under Section 439 of the Code of Criminal Procedure, seeking regular bail.

5. Learned counsel for the petitioners submits that the petitioners are innocent and have been falsely implicated in the instant case as they had refused to pay illegal gratification. It is submitted that the mandatory provisions of NDPS Act have not been complied with and the petitioners have no link with the alleged recovery. It is next submitted that the petitioners are in custody since 24.06.2021; the investigation in this case is complete and the challan stands presented on 01.10.2021, thus the trial is likely to take time

to conclude and no useful purpose would be served by keeping the petitioners behind bars for indefinite period. It is further submitted that the charge was framed in this case on 15.12.2021; however, no prosecution witness has been examined till date. It is submitted that the petitioners applied for regular bail before the Court of Judge, Special Court, Bathinda; however the same was wrongly dismissed vide order dated 29.07.2021. It is stated that the petitioners are not involved in any other case and they are ready to abide by any condition as may be imposed by this Court or by the trial Court, accordingly prayer for regular bail is made.

6. Per contra, learned State Counsel has opposed the prayer of petitioners for grant of regular bail on the ground of seriousness of the offence. Learned State Counsel has submitted that the recovered contraband in this case falls under the category of “Commercial Quantity” and thus bar under Section 37 of NDPS Act is attracted. It is further submitted that in case the petitioners are extended the benefit of regular bail then there is likelihood that they may influence prosecution witnesses or may even abscond and thus delay the trial. Accordingly, it is urged that the petitioners do not deserve the concession of regular bail and thus the instant petition may be dismissed.

7. I have heard learned counsel for the parties and perused the paper book, replyfiled on behalf of respondent-State of Punjab.

8. In the present case, the petitioners were apprehended with the alleged contraband (80 kgs.poppy husk), which falls under the category of “Commercial Quantity” and thus the rigors of Section 37 of NDPS Act are attracted. Section 37 of the NDPS Act, 1985, is reproduced hereunder:-

“[37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.].”

Hon’ble the Apex Court in ***Union of India vs Rattan Mallik @ Habul2009(1) RCR (Criminal) 938***, has held that when an accused is arrested in a case under the NDPS Act, 1985 then grant of bail to that accused is not only subject to limitation imposed under Section 439 of the Code of Criminal Procedure, but it is also subject to the restrictions placed by Section 37 of the NDPS Act, 1985 and the accused can be granted bail only if the Court is satisfied that there is a reasonable ground for believing that accused was not guilty of offence and also that he was not likely to commit any offence under the NDPS Act, 1985 while on bail.

9. In the present case, there is nothing on record so as to enable this Court to record a *prima facie* satisfaction as required under Section 37 of the NDPS Act that there are reasonable grounds for believing that the

petitioners are not guilty of such offence and also that, they are not likely to commit any offence while on bail. Moreover, the question as to whether the mandatory provisions of the NDPS Act were complied with or not, is a question of fact which requires to be decided at the time of trial.

10. Furthermore, when the accused is facing serious charges, he may develop temptation to jump the bail. The apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioners trying to tamper with the prosecution evidence by giving threats and inducement to the prosecution witnesses and absconding even to prolong the trial, cannot be brushed aside lightly. Apart from the above, there is every possibility that the petitioners may take path of crime again, in case, they are enlarged on bail.

11. In view of the above, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to petitioners (Jagjeet Singh @ Jagga and Major Singh) in case FIR No. 109 dated 24.06.2021 (Annexure P-1), under Section 15(c) of the NDPS Act, registered at Police Station Sangat, District Bathinda (Punjab); is dismissed. However, the trial Court is directed to expedite the trial.

12. Nothing stated here-in-above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

13. Pending application/s, if any, shall also stand disposed of.

May 2nd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No