

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. CRM-M-24150-2023

Roshan Lal Petitioner

Vs.

State of Haryana Respondent

2. CRM-M-30153-2023

Sandeep Kumar Petitioner

Vs.

State of Haryana Respondent

Reserved on: 15.09.2023
Pronounced on: 20.09.2023

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Ms.Himani Anand, Advocate, for the petitioner
(in CRM-M-24150-2023)

Mr. Jatinder Nagpal, Advocate, for the petitioner
(in CRM-M-30153-2023)

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

This order shall dispose of two petitions as titled above, filed under Section 439 CrPC, as petitioners in both of them pray for grant of regular bail in case FIR No.580 dated 30.10.2020 registered at Police Station Sadar Thanesar, District Kurukshetra, under Sections 15, 20, 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 [for short ‘the NDPS Act’] (Section 27-A of the NDPS act was added later on).

Prosecution case:

2. (i) As per separate status reports filed by the respondent/State in both the cases, secret information was received on 30.10.2020 by Sub Inspector Devender Kumar that Roshan Lal (*petitioner in CRM-M-24150-2023*) along with his servants Sandeep Kumar (*petitioner in CRM-M-30153-2023*), Feroz Khan and others used to sell poppy-husk and ganja to truck drivers, visiting his dhaba being run in the name and style of 'Shiv Gorakh' on G.T. Road in the area of Masana. Intimation under Section 42 of the NDPS Act was sent to the DSP, Kurukshetra. On the basis of rukka sent to the Police Station, FIR was registered.

(ii) Investigation was taken over by Inspector Jaspal Singh, In charge, Crime Investigation Branch-1, Kurukshetra. Raid was conducted on the godown situated on the back side of Shiv Gorakh Dhaba. Three persons namely, Roshan Lal (*petitioner in CRM-M-24150-2023*), Sandeep Kumar (*petitioner in CRM-M-30153-2023*) and Firoz Khan were found working in the godown. Compliance of Section 50 of the NDPS Act was made. On arrival of gazette officer Sh. Jaibir Singh Ranga, Naib Tehsildar, Thanesar, search of the godown was conducted. 47 bags containing **poppy-husk, with total weight of 1037 kg**; and 2 bags containing **Ganja weighing 34 kg** were found from the different rooms of godown, apart from plastic bags containing empty polyethene, two machines of polythene packing and small digital scale. All the case property was taken into possession. After completing necessary formalities at the spot, both the petitioners as well as Firoz Khan were taken into custody.

(iii) On 31.10.2020, case property was produced before the Id. Duty Magistrate, who drew the samples from all the bags and certified the inventory. During investigation, petitioner and co-accused suffered disclosure statements, revealing the name of Sujjan Singh @ Sonu to be the supplier of the contraband and also about the involvement of Rinku. Sujjan Singh @ Sonu was arrested on 02.08.2021 and Rajesh son of petitioner Roshan Lal was arrested on 06.01.2023.

Contentions for petitioner Roshan Lal:

3. (i) It is contended by Id. counsel appearing for petitioner Roshan Lal that petitioner is in judicial custody ever-since 30.10.2020 i.e., for the last more than 2 years and 10 months; that Id. Duty Magistrate removed 2 samples of 100 gram each from each bag after breaking open the seals, but without mixing the contents of each bag so as to make the contents homogeneous, which is in violation of the mandatory provision of standing order No.1/89 dated 13.06.1989 (Annexure P2). Further, as per the order dated 31.10.2020 (Annexure P3) of Id. JMIC, Kurukshetra, every sample parcel was sealed with two seals of 'TC', but as per the FSL report dated 16.03.2021 (Annexure P4), the samples were received sealed with only one seal of 'TC'. Id. counsel contends that this discrepancy shows that there is possibility of tampering of the samples.

(ii) Id. counsel further contends that petitioner has been falsely implicated due to enmity with the local police. Son of the petitioner had earlier filed a complaint to the Hon'ble Chief Justice of this Court regarding illegal detention of his father on 29.10.2020, which complaint was treated as CRWP-9841-2020 and was disposed of while granting liberty to the son

of the petitioner to approach the appropriate authority for redressal of his grievance. It is alleged that in order to wreck vengeance, the petitioner Roshan Lal was illegally detained and then this false case has been foisted upon him.

(iii) Ld. counsel for the petitioner has also drawn attention towards the deposition of ASI Sohan Lal made during the trial of present case arising out of FIR No.580 of 2020 and another case arising out of FIR No.583 dated 30.10.2020, so as to contend that in one case said ASI Sohan Lal (vide Annexure P7) is claiming that after deposition of the case property in the present case on 30.10.2020, he had left the charge as the MM of the Police Station and had joined the police line Kurukshetra, but during the statement (Annexure P-8) in the trial of case of FIR No.583 dated 30.10.2020, registered in the same Police Station under Section 15 of the NDPS Act, it is claimed by him that case property of that case was not only deposited with him on 30.10.2020 but also was deposited on 31.10.2020 after compliance of Section 52A of the NDPS Act.

(iv) Ld. counsel further drawn attention towards copy of the Register No.19 (Annexure P9) maintained in the Police Station to contend that at Sr.No.1091 details of the time and date of receipt of case property with its particulars relating to number of bags and seals are mentioned and that in Column No.7 details are also given about the compliance of Section 52A of the NDPS Act. However, at Entry No.1096, purported to be entry after the receipt of case property in this case after production in the Court, as per Section 52A of the NDPS Act, no such entry is found mentioned and instead statement of one HC Ram Mehar is found pasted there.

(v) Ld. counsel further contends that trial is likely to take long time due to large number of prosecution witnesses. Ld. counsel has referred to *Nitish Adhikary @ Bapan Vs. The State of West Bengal, SLP (Crl.) No.5769 of 2022, decided on 01.08.2022*, wherein Hon'ble Apex Court had granted relief of bail to the accused in case of commercial quantity of narcotic substances, where the accused had been in custody for a period of 1 years and 7 months on the ground of long incarceration. Same relief was granted by Hon'ble Apex Court in *Chitta Biswas @ Subhas Vs. The State of West Bengal, SLP (Criminal) No.8823 of 2019 and Criminal Appeal No.245 of 2020 decided on 07.02.2020*.

With all the above submissions, prayer is made for grant of regular bail.

Contentions for petitioner Sandeep:

4. On behalf of Sandeep Kumar (petitioner in CRM-M-30153-2023), it is argued by ld. counsel that no recovery was effected from him; that he was simply working as a servant with co-accused Roshan Lal; that no specific role is attributed to him apart from his presence at the Dhaba; that petitioner has no criminal antecedents and that he is in custody for the last more than 2 years and 10 months and so, in all these circumstances, he be allowed regular bail.

State Response:

5. (i) Refuting all the aforesaid contentions, ld. State counsel drawn attention towards the fact that huge quantity of contraband was recovered from the possession of the two petitioners and one co-accused, from the godown situated on the back side of the dhaba being run by petitioner

Roshan Lal and that said recovery was effected in the presence of a Gazetted officer i.e., Naib Tehsildar.

(ii) Ld. State counsel pointed out that there is a clear bar of Section 37 of the NDPS Act to grant bail in such like cases, as Roshan Lal (petitioner in CRM-M-24150-2023) is also involved in one more case being FIR No.583 dated 30.10.2020 registered at Police Station Thanesar under Section 15/29 of NDPS Act and he was earlier acquitted in one other case of the similar nature.

(iii) Ld. State counsel further submits that discrepancy in the number of seals in the order dated 31.10.2020 of ld. Duty Magistrate is only typographical, because as per Form No.29, duly signed by the Magistrate on the same day i.e. 31.10.2020, it is clearly mentioned that all the sample parcels were sealed with only one seal of 'TC', which fact also finds mention in the dispatch letter dated 04.10.2020 and it is for this reason that in the FSL report, there is reference of one seal of 'TC' on the sample parcels received for analysis. Ld. State counsel further submits that prosecution had moved an application before the concerned Magistrate for correction of the inventory in the order dated 31.10.2020, but that application has been dismissed on 04.09.2023 on the ground that ld. Magistrate had become *functus officio* and the matter was now pending before the concerned Special Court. Ld. State counsel submits that revision against that order dated 04.09.2023 has already been filed.

(iv) It is also informed by ld. State counsel that out of 50 witnesses cited by the prosecution, 5 have already been examined.

With all these submissions, prayer is made for dismissal of both the petitions.

6. I have considered submissions of both the sides and have appraised the record carefully.

Analysis by the Court:

7. It is no doubt true that both the petitioners are in custody ever since 30.10.2020 i.e., for the last more than 2 years and 10 months. It also appears that trial is likely to take long time to conclude considering the fact that only 5 witnesses have been examined by the prosecution so far out of 50 cited by it, as disclosed by Id. State counsel. However, this in itself cannot be a ground for grant of bail.

8. Court cannot ignore the huge quantity of contraband recovered from the petitioners and the co-accused. Said recovery was effected in the presence of a Gazetted officer after making compliance of Section 50 of the NDPS Act, from the godown of petitioner Roshan Lal. Commercial quantity in case of Poppy husk starts from 50 Kg; whereas in present case, recovery of 1037 Kg of poppy husk has been effected, i.e., much above the starting point of commercial quantity. Not only this, commercial quantity in case of Ganja starts from 20 Kg; whereas in present case, recovery of 34 Kg of Ganja has been effected. The fact that major part of this contraband was found in numerous numbers of polythene bags of varying weights, apart from recovery of large number of empty polythene, two machines of polythene packing and small digital scale, prima facie indicate that petitioners were involved into the trade and distribution of narcotics at large scale.

9. In the recent case of *Union of India v. Ajay Kumar Singh*, (2023 SCC OnLine SC 346) before Hon'ble Supreme Court, 6 packets and 135 plastic sacks containing 1005 packets of varying sizes were recovered.

The seized packets, apparently containing Ganja, were weighed and their gross weight was found to be 3971.600 kg. Respondent-accused were found involved in similar crimes in the past and that several cases were pending against him. High Court allowed bail. State approached the Apex Court against the said order. Hon'ble Supreme Court referring to Section 37 of the NDPS Act, observed as under:

"14. This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, inter alia, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application; and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience [Section 37\(1\)](#) is reproduced hereinbelow: -

"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 2[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."

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

17. *The quantity of “ganja” recovered is admittedly of commercial quantity. The High Court has not recorded any finding that the respondent-accused is not prima facie guilty of the offence alleged and that he is not likely to commit the same offence when enlarged on bail rather his antecedents are indicative that he is a regular offender. In the absence of recording of such satisfaction by the court, we are of the opinion that the High Court manifestly erred in enlarging the respondent-accused on bail.”*

10. As far as **Nitish Adhikary @ Bapan (Supra)** and **Chitta Biswas @ Subhas Vs. The State of West Bengal (supra)** cases, as relied by Ld. Counsel for the petitioner Roshan Lal, are concerned, bail in those cases were granted by the Hon’ble Supreme Court after taking note of the fact that the petitioner pertaining to those cases did not have any criminal antecedents. Besides, in the case of **Nitish Adhikary**, quantity of recovered contraband is not mentioned, so as to see applicability of those cases with the present one; whereas in **Chitta Biswas @ Subhas**, only 46 bottles of phensydryl cough syrup containing codeine mixture, were recovered. In the circumstances, no benefit of these authorities can be given to the petitioners.

11. As far as the discrepancy in the number of seals, as recorded in the order dated 31.10.2020 of Id. Magistrate pertaining to inventory report and the FSL report are concerned, this is the subject matter of trial, as prima facie mistake appears to be inadvertent or typographical, because in Form 29 prepared on 31.10.2020 itself and duly signed by the Magistrate (Annexure R1 produced in Sandeep’s case), number of seals is mentioned to be one, which is same as mentioned in dispatch letter dated 4.11.2020 & the FSL report. Similarly, the contention of Id. counsel for the petitioner regarding contradictory statements made by ASI Sohan Lal in two different

cases, is also a matter to be considered by the Court concerned at the time of trial.

12. Having regard to all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, it is held that petitioners are not entitled to bail.

Dismissed.

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

(DEEPAK GUPTA)
JUDGE

20.09.2023
Vivek

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |