

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

(1) **CRM-M-33623-2022 (O&M)**

Sumit @ Somit ...Petitioner

Versus

State of Haryana ...Respondent

(2) **CRM-M-3005-2022 (O&M)**

Sandeep Kumar ...Petitioner

Versus

State of Haryana ...Respondent

Date of Decision:- 19.1.2023

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Ashok K. Sharma Bhana, Advocate for the petitioner
in CRM-M-33623-2022.

Mr. S.K.Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Mr. Rajat Sheokand, Mr. Nitin Sachdeva,
Mr. Mukul Ahuja, Mr. Vasu Ranjan and Mr. Eashan Bhardwaj,
Advocates for the petitioner in CRM-M-3005-2022.

Mr. Gurmeet Singh AAG, Haryana,
assisted by SI Hari Kishan.

GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned two petitions filed on behalf of Sumit @ Somit and Sandeep Kumar seeking grant of regular bail in a case registered against them vide FIR No. 209 dated 8.9.2021 under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 61, 85 of the NDPS added later on) at Police Station Garhi, District Jind.

2. The FIR was lodged pursuant to receipt of secret information by ASI Ravinder Singh on 8.9.2021 while he alongwith police party was present at Garhi Bus Stand, to the effect that Sumit indulges in sale of intoxicating tablets and that even on the given day he was present at T-point Dhanarui in village Data Singh Wala while in possession of a large quantity of intoxicating tablets.
3. It is the case of prosecution that pursuant to receipt of said information, a notice in terms of Section 42 of the NDPS Act was conveyed to the police station and the police party proceeded to the nominated place in village Data Singh Wala where a young person was seen standing while carrying a black coloured polythene bag. The said person, upon noticing the police party, started walking briskly towards village Dhanauri but was nabbed by the police. Upon enquiry, he disclosed his name as Sumit. The search of the bag carried by him led to recovery of 20 strips of 'Tramadol' with each strip having 50 tablets i.e. a total of 1000 tablets of 'Tramadol'. 50 tablets were taken from one strip and were weighed and the weight of said 50 tablets was found to be 19.89 grams. Thus, it is alleged that a total of 397.8 grams of 'Tramadol' was recovered from Sumit.
4. It is further the case of prosecution that during the course of interrogation, said Sumit disclosed that he had procured the said tablets from Sandeep Kumar. Said Sandeep Kumar was also arrested by the police on 10.9.2021 and from whose possession 100 strips (each strip containing 10 tablets) of 'Tramadol' was recovered. The total weight of the recovered tablets was found to be 600 grams.

5. The learned counsel for the petitioners have submitted that the petitioners have falsely been implicated in the present case and as of now have been behind bars since the last about 1 year and 4 months and otherwise enjoy a clean record. The learned counsel has further submitted that since the trial has not even commenced till date inasmuch as a supplementary challan against another co-accused is yet to be filed, further detention of the petitioners would not be justified. The learned counsel has pressed into service a judgment delivered by a co-ordinate Bench of this Court in CRM-M-9317-2022 - Chunni Ram @ Sandeep Vs. State of Haryana wherein an accused has been granted bail solely on account of custody of 1 years and 2 months.
6. On the other hand, the learned State counsel has vehemently opposed the petitions and has submitted that since the petitioner-Sumit was caught red handed at the spot while in possession of a 'commercial quantity' of contraband and that pursuant to a disclosure statement made by him, even petitioner-Sandeep Kumar was found in possession of 600 grams of 'Tramadol' which also falls in the category of 'commercial quantity', no case for grant of bail is made out. The learned State counsel has submitted that the judgment relied upon by the petitioners i.e. Chunni Ram's case which was delivered on 22.11.2022 would not be of much advantage to the petitioners, given the fact that the latest position as settled by Hon'ble Supreme Court in Narcotics Control Bureau vs. Mohit Aggarwal, 2022(3) RCR(Criminal) 985 has not been taken into account. The learned State counsel has pressed into service a judgment dated 24th November, 2022 rendered in CRM-M-19038-2022 Sagar Vs. State of Haryana wherein this

Court while relying upon the judgment rendered in Mohit Aggarwal's case and some other cases has dismissed the petition despite the fact that the petitioner had been behind bars since the last about 1 year and 4 months.

7. This Court has considered the rival submissions.
8. Having regard to the fact that it is a case of recovery of 'commercial quantity' of contraband, the fetters imposed by Section 37 of the NDPS Act will come into play in the matter of grant of bail.
9. At this stage, there is nothing to doubt the case of prosecution. Hon'ble Apex Court in a judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under the NDPS Act is uncalled for.
10. Hon'ble Supreme Court in a very recent judgment Narcotics Control Bureau vs. Mohit Aggarwal, 2022(3) RCR(Criminal) 985, while deciding an appeal filed by Narcotics Control Bureau challenging grant of bail to an accused by the High Court, cancelled the bail while reiterating the view that provisions of Section 37 of the Act have to be strictly complied with and that mere length of custody cannot be a consideration for grant of bail. Paras 14 and 18 of the said judgment read as follows :-

“14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. xxx xxx xxx
16. xxx xxx xxx
17. xxx xxx xxx
18. In our opinion the narrow parameters of bail available under Section 37 of the Act, have not been satisfied in the facts of the instant case. At this stage, it is not safe to conclude that the respondent has successfully demonstrated that there are reasonable grounds to believe that he is not guilty of the offence alleged against him, for him to have been admitted to bail. The length of the period of his custody or the fact that the charge-sheet has been filed and the trial has commenced are by themselves not considerations that can be treated as persuasive grounds for granting relief to the respondent under Section 37 of the NDPS Act.”
11. There is nothing on record to suggest that the petitioners have been falsely implicated or that in case released on bail, they will not commit identical offences again. As such, having regard to fetters imposed by Section 37 of the NDPS Act and also the ratio of judgments cited above, no case for grant of regular bail is made out.
12. The petitions are sans merit and are hereby dismissed.
13. Since the learned State counsel has informed that supplementary challan against co-accused Manjeet Singh is ready and shall be presented before the trial Court on the next date of hearing, it be ensured that the same is done accordingly. Upon presentation of supplementary challan, the trial Court shall consider the question of framing of charges expeditiously by fixing a short date. In case, the trial Court is of the opinion that the accused are required to be tried then the trial Court may make a schedule in advance for summoning the PWs and fix short dates for the witnesses to be summoned. Special messengers be deputed for securing presence of the witnesses. If deemed necessary, a request be also be made to Senior Superintendent of Police concerned for ensuring that the presence of all the PWs is secured for

the dates as may be fixed by the Trial Court. The prosecution is also directed to ensure the presence of all the PWs before the trial Court on the dates as may be fixed by the trial Court for recording prosecution evidence. The District Attorney concerned to take necessary steps for the purpose of securing the presence of the remaining PWs.

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

19.1.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No