

CRM-M-34228-2022 (O&M) AND
CRM-M-18142-2023 (O&M)

212 (2 cases)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: July 20, 2023

1. CRM-M-34228-2022 (O&M)

Satnam Singh @ Judge

....Petitioner

versus

State of Punjab

....Respondent

2. CRM-M-18142-2023 (O&M)

Ashwani Kumar @ Monu

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ruhani Chadha, Advocate for petitioner
in CRM-M-34228-2022.

Mr. Gagandeep Singh Simble, Advocate for petitioner
in CRM-M-18142-2023.

Mr. Virat Rana, AAG Punjab.

ARUN MONGA, J. (ORAL)

CRM-27663-2022

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Vide this common order, above-mentioned two bail petitions arising out of same FIR are being disposed of. For brevity, recitals are from CRM-M-34228-2022.

2. Petitioners seek bail in a case bearing FIR No.235 dated 28.08.2021, registered under Sections 21-Cof the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of NDPS Act added later on), at Police Station Mandi Gobindgarh, District Fatehgarh Sahib, Punjab.

3. Per prosecution version, on 28.08.2021, 300 grams of heroin and drug money of Rs.1,25,000/- was recovered from conscious possession of petitioners, namely

Satnam Singh @ Judge and Ashwani Kumar @ Monu. Petitioner Satnam Singh alias

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Judge was on the co-driver front seat at the time of occurrence, whereas petitioner Ashwani Kumar alias Monu was on the steering wheel of the car (Make *i20*) bearing registration No.PB-07-AR-6606. Both the petitioners were arrested on the spot.

4. Learned counsel for petitioners submits that petitioners have been falsely implicated in this case. They further contend that alleged recovery of contraband is a planted one. Petitioners were actually picked up by Incharge CIA Staff Sirhind, along with ASI Sachin in swift car on 27.08.2021, at about 3.00 p.m., but FIR in question was registered against them on the next day. No alleged offence has been made out against the petitioner. FIR has been registered on the basis of a secret information, but said information was never reduced into writing or conveyed to any senior police officers. There is also allegedly violation of Section 42 of NDPS Act. He also urges that there was no compliance of mandatory provisions of NDPS Act as no independent witness/public witness/gazetted officer was joined by the police at the time of alleged recovery/seizure of contraband. Nothing is to be recovered from the petitioners and they are not required for further custodial interrogation. There is no likelihood of petitioners tampering with evidence and/ or influencing prosecution witnesses.

5. On the other hand, learned State counsel, on instructions from ASI Jagdev Singh opposes the bail petition. He submits that petitioners have committed a serious offence. In case, they are let out on bail, there are chances of his fleeing from justice. Learned State counsel further submits that since commercial quantity of contraband was recovered from petitioners, they do not deserve any concession in view of the rigors of Section 37 of the NDPS Act. Learned State counsel though admits that there is no other case pending against the petitioners.

6. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. On a Court query, state counsel informs that challan has already been filed and charges were framed on 24.03.2022. There are total 25 witnesses, out of them none has been examined so far. Charges have already been framed and trial has commenced,

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8. Learned counsel for the petitioner has drawn my attention to lackadaisical attitude of prosecution in adducing evidence by not producing prosecution witnesses before the trial Court despite numerous opportunities, as is borne out from proceedings of the trial Court contained at Annexure P-9 in CRM-M-34228-2022. Learned counsel for petitioners contends that despite trial Court having issued warrants for production of prosecution witnesses, who are officials, repeated adjournments are being sought. Resultantly, further trial is forestalled and on the other hand, petitioners merely being suspects continue to suffer incarceration in jail for no fault of theirs.

9. In fact, practice of prosecution in delaying trials by not producing official witnesses has already been deprecated by this Court and a judicial notice has therefore, been taken in CRM-M-18507-2022 seeking explanation from the State. The said matter is pending for adjudication so as to take effective steps in obviating such situations in pending trials.

10. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, both the petitioners have already been in jail for the last more than 1 year and 11 months in preventive custody, being behind bars from 28.08.2021.

11. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if they are let out, they may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the trial Court to which accused have no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

12. Be that as it may, offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime. Petitioners have clean antecedents. In any case, allegations against petitioners are matter of trial.

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13. Petitioner-Satnam Singh is stated to be 26-year old unmarried person. Petitioner-Ashwani Kumar @ Monu is stated to be 35-year old married person having wife and one minor. It is stated that both the petitioners have added responsibilities of their old aged parents as well and in their absence, they all are living in sheer penury.
14. Considering the overall scenario and without commenting on the merits of the case, the instant petitions are allowed. I am of the view that no useful purpose would be served to keep the petitioners in further preventive custody.
15. Accordingly, petitioners in both the petitions are ordered to be released on bail, in case not required in any other case, on their furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where their case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
16. In case, petitioners are found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant case.
17. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.
18. Pending application(s), if any, shall also stand disposed of.
19. A photocopy of this order be placed on the file of the connected case.

(ARUN MONGA)
JUDGE

July 20, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No