

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

207/2

CRM-M-36989 of 2022
Date of Decision:03.07.2023

Jaipal Singh

....Petitioner

Versus

State of Haryana

.....Respondent

2)

CRM-M-39759 of 2022

Vikram Singh

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON’BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jashandeep Singh Sandhu, Advocate,
for the petitioner in CRM-M-36989 of 2022.

Mr. Aditya Sanghi, Advocate,
for the petitioner in CRM-M-39759 of 2022.

Ms. Harpreet Kaur, AAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

1. Both the cases are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out from the same FIR and the prayer made in both of these cases is for the grant of regular bail.
2. Both these petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.4

dated 03.01.2021, under Section 22(c) of the NDPS Act, registered at Police Station Sadar Dabwali, District Sirsa.

3. As per the allegations, the police party had apprehended one co-accused namely Neeraj @ Neeru from whom there was an alleged recovery of 30000 tablets of Tramadol.

4. On the basis of the disclosure statement of the aforesaid co-accused, name of one of the present petitioner, namely, Jaipal Singh was nominated. Thereafter, on the basis of an alleged disclosure statement of the aforesaid Jaipal Singh, the name of the second petitioner, namely, Vikram Singh was nominated.

5. The aforesaid co-accused Neeraj @ Neeru has already been admitted on default bail by this Court in CRR-1106 of 2021.

6. Mr. Jashandeep Singh Sandhu, Advocate appearing on behalf of the petitioner (in CRM-M-36989 of 2022) and Mr. Aditya Sanghi, Advocate appearing on behalf of the petitioner (in CRM-M-39759 of 2022) have submitted that it is a case where both the petitioners have been falsely implicated and the main accused from whom the recovery was effected has already been granted bail in the nature of default bail. They submitted that no recovery has been effected from both the petitioners even during the course of investigation. The reason for naming the petitioner Jaipal Singh in the present case was because of the personal rivalry with the co-accused namely Neeraj @ Neeru and due to which both the petitioners have now faced incarceration for about two years since the petitioner Jaipal Singh is in custody from 09.01.2021 and the petitioner Vikram Singh is in custody from 13.04.2021. They submitted that out of total 21 cited prosecution witnesses 5 witnesses have been examined as per the affidavit filed by the State. They also submitted that even as per the affidavits/status report which have been filed in the

present case by the State, no connection can be established with regard to the present offence qua both the petitioners. The only reliance which has been made by the State is on the basis of disclosure statement of the co-accused namely Neeraj @ Neeru who is already on default bail. They also referred to a judgment of the Supreme Court in Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1 to contend that in the absence of any other cogent and sufficient material to connect the petitioners with the offence, both the petitioners are entitled for the grant of regular bail since the only material available with the State is disclosure statement of a co-accused which is not admissible in evidence. They also submitted that considering the long custody of the petitioner and the fact that five prosecution witnesses have already been examined, they may be considered for the grant of regular bail.

7. On the other hand, Ms. Harpreet Kaur, learned AAG, Haryana has submitted that it is correct that both the petitioners have faced incarceration for more than two years but has opposed the grant of regular bail to the petitioners on the ground that the quantity involved in the present case is a huge quantity and falls in the commercial quantity and therefore hit by the bar contained under Section 37 of the NDPS Act. She also submitted on instructions that it is correct that the petitioner Vikram Singh is not involved in any other case whereas the petitioner Jaipal Singh is involved in three other cases out of which two cases pertain to Section 138 of the Negotiable Instruments Act, 1881 and one is under Sections 307, 452, 323, 147, 148 of the IPC and 3/25 of the Arms Act but none of the petitioners are involved in any other case pertaining to NDPS Act.

8. I have heard the learned counsel for the parties.

9. It is a case where both the petitioners have faced incarceration for

more than 2 years. As per learned counsel for the petitioners, five prosecution witnesses have already been examined and no recovery was effected from the petitioners and the main accused in the present case from whom the alleged recovery was effected is Neeraj @ Neeru who has already been admitted to bail although on default bail by this Court. Since the quantity which is involved in the present case falls in the category of commercial quantity, the rigor of Section 37 of the NDPS Act has to be considered. In the present case, recovery was effected from the co-accused namely Neeraj @ Neeru even as per the prosecution. The aforesaid Neeraj @ Neeru has already been granted bail. It is not the case of the prosecution that any recovery was effected from the petitioners. Therefore, considering the latest judgment of the Hon'ble Supreme Court in **Mohd Muslim @ Hussain versus State (NCT of Delhi) 2023 AIR (SCC) 1648** and the custody of both the petitioners which is more than 2 years as per learned counsel for the petitioners, the bar contained under Section 37 of the NDPS Act will not apply in the present case. Furthermore, it is not the case of the State that in case the petitioners are released on bail, then they may abscond from justice or influence any witness or tamper with any evidence.

10. In view of the aforesaid facts and circumstances of both the cases, this Court is of the considered view that both the petitioners are entitled for the grant of regular bail in the light of Article 21 of the Constituion of India. Consequently, both the petitions are allowed. The petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

11. However, anything observed hereinabove shall not be treated as an

expresion of opinion on merits of the cases and is only meant for the purpose of decision of both the petitions.

(JASGURPREET SINGH PURI)
JUDGE

July 03, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No