

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: September 02, 2023

1. CRM-36869-2023 in/and
CRM-M-24230-2023

Achhar Singh ...Petitioner

Versus

State of Punjab ...Respondent

2. CRM-M-35541-2023

Mukesh and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Kamaldip Singh Sidhu, Advocate for the petitioner
in CRM-M-24230-2023.

Mr. Dinesh Maurya, Advocate for the petitioners
in CRM-M-35541-2023.

Mr. R.S. Khaira, DAG, Punjab.

DEEPAK GUPTA, J.(Oral)

CRM-36869-2023 in CRM-M-24230-2023

This is an application to place on record documents Annexures P-5 to P-8, which are copies of the Memo prepared under Section 50(1) (referred as dissent memo) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'the NDPS Act'), besides recovery memo and the memo of ground of arrest.

Allowed.

Annexurs P-5 to P-8 are taken on record.

Main petitions

In both the petitions titled above, prayer has been made for grant of regular bail in case FIR No.45 dated 23.02.2023 under Section

20 of the NDPS Act, registered at Police Station Samrala, District Khanna.

2. Status report has been filed by the respondent-State in CRM-M-35541-2023 filed on behalf of petitioners, namely, Mukesh and Hem Raj. Learned State counsel submits that said status report may also be considered for the purpose of CRM-M-24230-2023 filed by petitioner-Achhar Singh.

3. As per the prosecution allegations, on 23.03.2023, a police party headed by SI Paviter Singh was on special nakabandi. During the said checking, an ALTO car bearing registration No.HP-39A-7744 was signaled to stop. Three persons were occupying the car. The driver disclosed his name as Achhar Singh (petitioner in CRM-M-24230-2023). The person sitting on his side disclosed his name as Mukesh (petitioner No.1 in CRM-M-35541-2023) and person sitting behind the driver seat disclosed his name as Hem Raj (petitioner No.2 in CRM-M-35541-2023). On account of suspicion, their consent under Section 50 of the NDPS Act was sought so as to search the vehicle and after completing the formalities, car was searched. Under the driver seat of the car, a polythene bag was found containing 1 Kg. 10 grams of *charas*.

4. It is contended on behalf of petitioner Achhar Singh that he was simply a driver on the car owned by him, which was being used as a taxi and the same was boarded by the other co-accused. He was not aware about the contents of any contraband and was thus not in conscious possession thereof.

5. On behalf of petitioners, namely, Mukesh and Hem Raj, it is

contended that recovery was effected from a busy place and that no independent witness was joined. Still further, it is contended that alleged notice under Section 50 of the NDPS Act was defective; that recovered quantity is just little above the commercial; that challan has already been filed after completion of the investigation; that trial may take time to conclude and that the petitioners are not involved in any other case.

6. Apart from above, learned counsel for petitioner, namely, Achhar Singh has also referred to the disclosure statement of co-accused, namely, Mukesh, which has been placed on record as Annexure P-2, as per which he along with Hem Raj had taken the ALTO car on rent. He did not told Hem Raj or the driver of the ALTO car that he was having charas with him. Said Mukesh also disclosed that he had taken the charas from one Chunni Lal Kasol, which he had to deliver in Samrala. On the basis of this disclosure statement, it is urged by learned counsel that it is only accused Mukesh from whom the recovery was effected.

7. Opposing the bail petition, learned State counsel submits that recovery has been effected jointly from all the three petitioners, who were occupying the car. However, it is conceded by learned State counsel that disclosure statement only of petitioner-Mukesh was recorded, as per which contraband belonged to him. On the basis of custody certificates placed on record pertaining to all the three petitioners, it is also conceded that none of them are involved in any other case.

8. Recovered quantity of the contraband is slightly higher than the commercial category. As per disclosure statement as relied by the prosecution also, the contraband belonged to petitioner-Mukesh only.

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CRM-M-35541-2023

Neutral Citation No. 2023:PHHC:115441
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Petitioners-Achhar Singh and Hem Raj had only occupied the car and so it will be a matter of trial as to whether the recovery of contraband can be considered to be from their conscious possession simply for the reason that they were also occupying the car. The recovered quantity is slightly higher than the commercial. Petitioners are in custody for the last 06 months and 07 days. Investigation is already complete and challan has been presented, but not even a single witness has been examined so far.

10. Having regard to all the aforesaid facts and circumstances, but without commenting further on the merits of the case, petitioners, Achhar Singh and Hem Raj are admitted to bail. They are ordered to be released on bail on their furnishing requisite bail bonds and surety bonds to the satisfaction of learned Trial Court/Duty Magistrate concerned. However, bail qua petitioner, namely, Mukesh, to whom contraband belonged stands rejected.

As such, CRM-M-24230-2023 is allowed.

CRM-M-35541-2023 qua petitioner-Hem Raj, is allowed, but qua petitioner-Mukesh, same is dismissed.

Photocopy of this order be placed on the connected case file.

September 02, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No