

CRM-M-42342-2022 (O&M) AND
CRM-M-57641-2022 (O&M)
210 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: August 17, 2023

1. CRM-M-42342-2022 (O&M)

Davinder Singh

....Petitioner

versus

State of Punjab

....Respondent

2. CRM-M-57641-2022 (O&M)

Surjit Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Hardeep Singh, Advocate for petitioner
in CRM-M-42342-2022.

Mr. Amit Arora, Advocate for petitioner
in CRM-M-57641-2022.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Vide this common order, above-mentioned two bail petitions, arising out of the same FIR, are being disposed of. For brevity, recitals/facts are from CRM-M-42342 of 2022.

2. After being declined bail by the trial Court, petitioners before this Court seek their release as undertrial in a case bearing FIR No.02 dated 15.02.2022, registered under Sections 18, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, State Special Operational Cell (SSOC), District Amritsar.

3. Per prosecution version, on the basis of secret information a barricade was erected and a truck bearing registration No.PB05-AL-8829 was stopped. On its search, 04 kilograms of Opium was recovered from underneath the driver's seat. Both the occupants of truck, the petitioners herein, were arrested on the spot and are in custody ever since.

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4. Learned counsels for petitioners submit that petitioners have been falsely implicated. Petitioner-Davinder Singh was driver and petitioner-Surjit Singh was cleaner of the truck in question. So called secret information was received in the Police Station at 10:30 a.m., and the FIR was lodged on the basis of secret information at 11:19 a.m., but the truck was already in possession at police station at 7:30 a.m., which simply shows alleged contraband has been planted upon the petitioners. Alleged recovery was from underneath the driver seat is required to be proved during trial by leading cogent evidence. Provisions of Sections 50 and 52-A of NDPS Act were also not complied with. He contends that if mobile location of ASI Jagdeep Singh Mobile No.7355544446 of Police Station, SSOC is verified, it would show that entire story of the prosecution that the vehicle in question was taken into possession from Ludhiana is false. Learned counsel further submits that petitioners are not involved in any other case. 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 Babu Lal, opposes the bail petitions. She submits that petitioners have committed serious offence. She further contends that 4 kg of poppy-husk was recovered, which falls within commercial quantity and rigors of Section 37 of NDPS Act are applicable. If released on bail, there is likelihood of petitioners fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. Learned State counsel though admits that petitioners are not involved in any other case.

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

7. On a Court query, learned State counsel informs that challan was filed and charges were framed on 22.12.2022. Investigation is thus complete and he is not required for custodial interrogation. Out of total 14 witnesses, only 02 have been examined so far. 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, petitioners

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have already been languishing in jail for the last more than 1 year and 5 months in preventive custody, being behind bars since 15.02.2022.

8. 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 has 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.

9. Offence allegedly committed by petitioners is of non-violent nature and in that sense their release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioners are matter of trial. At this stage, there appears to be reasonable ground that petitioners may not be guilty of the alleged offence. They are unlikely to commit any offence while on bail.

10. Petitioners are stated to be 49 and 51 years old family persons and having fixed abode. It is unlikely that they pose any flight risk and/or will flee from the trial proceedings.

11. 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.

12. Accordingly, petitioners 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 cases are being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. 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.

14. 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

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hearing the instant bail petition alone and learned trial Court shall proceed without being
influenced with this order.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No