

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2023:PHHC:136713

CRM-M-40011-2023
DECIDED ON: 19.10.2023

RAHUL

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

and

2023:PHHC:136716

CRM-M-27221-2023 (O&M)

SAMUEL BHATTI ALIAS SAM

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Karandeep S. Sidhu, Advocate
for the petitioner in CRM-M-40011-2023.

Mr. Prateek Gupta, Advocate and
Mr. Nitin Gupta, Advocate
for the petitioner in CRM-M-27221-2023.

Mr. Rajiv Verma, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioners in FIR No.263, dated 18.07.2022, under Section 21 of the NDPS Act and Sections 25 of the Arms Act (Sections 25, 29 of the NDPS Act added later on), registered at Police Station City Ferozepur,

District Ferozepur.

2. Vide this common order, this Court intends to dispose of both the aforesaid petitions, as they are arisen out of the same FIR.

3. Learned counsel for the petitioners contends that the alleged recovery is of 260 grams heroin, which was allegedly effected from the car in which the petitioners alongwith other co-accused were travelling. The bag containing the said contraband was lying near the gear of the car under the hand-brake and apart from that there is no other incriminating material connecting them with the said contraband.

4. Mr. Prateek Gupta, Advocate and Mr. Karandeep S. Sidhu, Advocate for both the petitioners submit that the accused-petitioners were stated to be travelling in the car, which is admittedly owned by one Ganesh Singh, who has been granted the anticipatory bail by a co-ordinate Bench of this Court vide order dated 18.08.2022 (Annexure P-8) passed in CRM-M-36504-2022.

5. Learned Advocates appearing for both the petitioners further assert before this Court that charges were framed before the trial Court on 27.04.2023, but till date no prosecution witness has been examined out of total 10 prosecution witnesses.

6. Learned State counsel has filed the custody certificates of both the petitioners, which are taken on record. According to the custody certificate, the petitioners are behind the bars for the last 1 year, 2 months and 24 days. He on the strength of the custody certificate asserts that the custody period is not good enough to consider his case for regular bail, since trial is at the initial stage and further contends that the grant of anticipatory bail to the co-accused was on account of the fact that he was arrayed or nominated merely on the basis of disclosure statement by the present petitioners. He also submits referring to the custody certificate that the petitioners are involved in other cases as well and that is a predicament for not

7. On the other hand, Mr. Prateek Gupta, Advocate relies upon a judgment passed by the Apex Court in *Narcotics Control Bureau vs. Mohit Aggarwal, Crl Nos. 1001-1002 decided on 19.07.2022* to assert that wherein the persons are named without disclosing the source of contraband, even the anticipatory bail deserves to be granted.

8. Be that as it may, admittedly the contraband recovered of 260 grams of heroin, which is marginally over and above the commercial quantity i.e., 250 grams and both the accused-petitioners were found travelling in car, which admittedly belongs to the other co-accused namely Ganesh Singh, who has been granted the concession of anticipatory bail by a co-ordinate Bench of this Court.

9. It is also an admitted position on record that after framing of charges in April 2023, no single prosecution witness has been examined by the prosecution, despite lapse of 6 months and therefore, the arguments of the learned State counsel cannot be appreciated to the effect that the period of custody at this stage is on the lesser side and trial is at the initial stage. If the prosecution has not initiated and taken steps so far in 6 months to produce its witnesses, it is quite apparent that examination of 10 prosecution witnesses is rightly to take long time and on that account, the petitioners cannot be detained in custody for an indefinite period, which curtails the right to life and liberty as enshrined under Article 21 of the Constitution of India and the said Article also provides the right for speedy trial and otherwise also bail is a rule and jail is an exception. As far as pendency of other criminal cases is concerned, this Court in various judgments has already observed that pendency of other FIRs involving the accused-petitioners cannot be a predicament to consider the case for regular bail, as the evidence of the material involved in those FIRs can be treated in those cases alone and is not material for the instant FIR.

the record, this Court has no reason to deny the relief of regular bail to the petitioners.

11. Hence, both the petitioners are directed to be released on regular bail on their furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

12. Both the petitions are hereby allowed.

13. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

19.10.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>