

CRM-M-44886-2023 (O&M) 1

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-44886-2023 (O&M)
Date of Decision: 06.12.2023

HARI RAM

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CRM-M-44899-2023 (O&M)
Date of Decision: 06.12.2023

LEELAWATI DEVI

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Simranjeet Singh Sarwara, Advocate
for the petitioners.

Mr. I.P.S. Sabharwal, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. These are the first petitions under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioners in the case bearing FIR No. 218 dated 12.07.2023 registered under Sections 20 of Narcotic Drugs and Psychotropic Substances Act 1985 (in short 'NDPS Act') at Police Station Dera Bassi District SAS Nagar.

2. FIR was lodged on the basis of secret information received by ASI Kuldeep Singh on the allegations that the petitioners are engaged in selling Ganja in the area of Dera bassi by bringing it from Bihar and today also petitioners are brining Ganja from Ambala side to Haldiram Jawaharpur. In case interception is made, these persons can be apprehended with huge amount of Ganja. On finding the information provided by the secret informer as credible, a ruqa was sent. On the basis

apprehended and 7 Kg of Ganja was recovered from his possession, whereas from petitioner namely Leelawati Devi, 5 KG of Ganja was recovered.

3. Learned counsel for the petitioners contends that the petitioners are behind the bars since 12.07.2023. Investigating Team has concluded the investigation and filed the investigation report under Section 173 Cr.P.C. on 26.10.2023. The prosecution has cited 11 prosecution witnesses and none of them has been examined so far. It is further contended that the alleged contraband recovered from the possession of the petitioners do not fall within the ambit of commercial quantity.

4. Per contra, learned State counsel opposes the prayer for grant of bail to the petitioners on the ground that in fact the total recovery is 24 KG of Ganja from all the accused persons and as such the argument made by learned counsel for the petitioners that quantity of contraband recovered falls under the non-commercial quantity, is required to be rejected.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that the investigation of the case is complete and final report under Section 173 of Cr.P.C. has already been submitted on 26.10.2023, the conclusion of the trial will take long time and petitioners are not involved in any other case under NDPS Act. Culpability, if any, would be determined at the time of trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

6. In view of the above, petitioners Hari Ram and Leelawati Devi in both the petitions are ordered to released on regular bail subject to their furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

8. Both the petitions are allowed.

(HARPREET SINGH BRAR)
JUDGE

06.12.2023
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No