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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-47439-2022

1. Amandeep Singh @ Aman**...Petitioner**

Versus

State of Punjab**...Respondent**

CRM-M-48323-2022

2. Bohar Singh @ Bohra**...Petitioner**

Versus

State of Punjab**...Respondent**

Date of decision : 15.05.2023

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.P.S. Sidhu, Advocate and
Mr. Jashandeep Sandhu, Advocate for
Mr. Tarun Sharma, Advocate
for the petitioner(s).

Mr. Karunesh Kaushal, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

This order will dispose of abovesaid two petitions as they have arisen out of same FIR.

Petitioners have approached this Court praying for grant of regular bail in case FIR No.0153 dated 10.07.2022, under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Special Task Force, District STF Wing (Mohali).

Succinctly, facts of the case are that the police party while on patrolling received a secret information that Bohar Singh @ Bohra and Amandeep Singh @ Aman were involved in selling the opium and they

were in a Swift Car bearing registration No.PB-11-AR-0991. It was informed that if the *naqa* was laid they could be arrested with the opium. On receipt of the information, *naqa* was laid by the police party. After some time, the police party spotted the car seen parked there and the same was surrounded by the police party. The person sitting on the driver seat, on asking, disclosed his name as Bohar Singh @ Bohra whereas other one sitting on the side seat disclosed his name as Amandeep Singh @ Aman. The police party tried to associate some public witness but failed to join any independent witness and in the presence of the other police officials, they recovered a polythene envelope lying on the dashboard from which 2 kg of opium was recovered. Both the inmates of the car failed to show any licence for keeping the contraband recovered and thus, they were arrested on the spot. The investigation commenced and sample was sent to the FSL. On receipt of the FSL report, the contraband confirmed to be containing opium. The petitioners approached the Court of learned Judge, Special Court, Ferozpur praying for grant of bail. However, after hearing counsel for the parties, learned Judge, Special Court declined the same vide order dated 28.09.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioners have vehemently contended that petitioners have been falsely implicated in this case. He submits that the petitioners are not owner of the car. He submits that the case of the prosecution is based on the secret information. However, the provisions of Section 42 of NDPS Act which is mandatory in nature has not been complied with by the Investigating Agency. It is further submitted that the contraband has been recovered from the dashboard of

the car and thus, the conscious possession of the same is also not proved. It has further been submitted that the contraband recovered is 2 kg of opium which is a non-commercial quantity and thus, there is no minimum sentence for the same. It is submitted that petitioner Amandeep Singh @ Aman has no criminal antecedents whereas, Bohar Singh has been falsely implicated in one another case, however, he has been granted bail in that case by learned Additional Sessions Judge, Ferozepur. Learned counsel has submitted that the petitioner-Amandeep Singh @ Aman was granted interim bail by this Court on account of ill-health of his father and he duly surrendered back after availing the interim bail. It is submitted that the petitioners are behind bars from the date of their arrest and out of 12 prosecution witnesses, prosecution has examined only 01 witness till date and thus, the trial would take sufficiently long time in its conclusion and hence, petitioners deserve to be granted regular bail.

Learned State counsel has opposed the submissions made by counsel for the petitioners. He, on instructions from ASI Baljinder Singh, has submitted that the case of the prosecution is based on secret information and provisions of Section 42 of NDPS Act were duly complied with. He submits that on the receipt of information, naqa was laid and both the petitioners were arrested on spot itself. He further submits that the contraband was recovered from the dashboard of the car in which both the petitioners were traveling. He submits that though the investigating agencies tried to join, the independent witness but as nobody was ready, thus, the search was conducted by the investigating team. He has submitted that as per information provided, petitioner-Amandeep Singh @ Aman has no criminal antecedents whereas co-

accused Bohar Singh @ Bohra is involved in other case, however, he is on bail in that case. He submits that out of 12 prosecution witnesses, only 01 witness has been examined till date.

I have heard counsel for the parties and perused the record.

Evidently, the recovery made from the petitioners is on the basis of secret information. The contraband recovered is 2 kg of opium which admittedly falls in the category of non-commercial quantity and thus, provisions of Section 37 of NDPS Act are not attracted. Besides this, petitioner-Amandeep Singh @ Aman has no criminal antecedents, however, another similarly situated petitioner-Bohar Singh @ Bohra is involved in other case, however, he is on bail in that case.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioners succeed in making out a case for grant of regular bail. Accordingly, the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

15.05.2023
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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