

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-24.01.2023

CRM-M-57922-2022

Ramesh Kumar.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

AND

CRM-M-39025-2022

Moola Ram.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Anshuman Dalal, Advocate for the Petitioner
(in CRM-M-57922-2022).

Mr. K.S. Brar, Advocate for the petitioner
(in CRM-M-39025-2022).

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

By this common order I shall dispose of both the aforesaid petitions as the same have arisen out of the same FIR.

The Prayer in these petitions under Section 439 Cr.PC is for the grant of regular bail in case FIR No.07 dated 10.01.2022 under Sections 22(c), 25 and 29 of the Narcotics Drugs and Psychotropic Substances Act,

1985 registered at Police Station Khuian Sarwar, District Fazilka.

2. The brief facts of the case are that on 10.01.2022 when the police party headed by ASI Harmander Singh was on duty on the inter state Naka Gumjal Barrier a secret informer gave information that some private buses used to come to Punjab from Rajasthan to get diesel. Today one bus bearing RC No.RJ-07PB-8111 being driven by Mulla Ram (petitioner in CRM-M-39025-2022) son of Hukma Ram along with his conductor Ramesh Kumar (petitioner in CRM-M-57922-2022) son of Ganga Ram were coming to Punjab for purchasing diesel for the bus. They bring intoxicating tablets and would supply the same in Punjab.

Based on the information the FIR in question was got registered against the aforementioned two persons. Thereafter, the bus was stopped and a carton box was seen lying in the bus. On being asked, the driver of the bus disclosed his name as Mulla Ram and the conductor as Ramesh Kumar.

During search of the box the following intoxicating tablets were recovered:-

(a) 31 tablet strips Tramadol Hydrochloride and Paracetamol ULTRAFAIR (each strip containing ten tablets, 310 tablets Batch No.BMT-2919, Mfg. June, 2021, Exp. May, 2023;

(b) 10 tablet strips Tramadol Hydrochloride and Paracetamol ULTRAFAIR (each strip containing ten tablets, 100 tablets) Batch No.BMT-1805, Mfg. Oct., 2020, Exp. Sept., 2022;

(c) 39 tablet strips Tramadol Hydrochloride and Paracetamol ULTRAFAIR (each strip containing ten tablets, 390 tablets) Batch No.BMT-1515, Mfg. Aug., 2020, Exp. July 2022;

(d) 258 tablet strips Etizolam tablets 0.5 mg ET FAIR 0.5 mg. (each strip containing ten tablets, 2580 tablets) Batch No.MT-202192, Mfg. 09, 2020, Exp. 08 2022;

(e) 1092 tablet strips Etizolam and Escitalopram tablets ET FRESH (each strip containing ten tablets, 10920 tablets) Batch No.MT-202193, Mfg. 09, 2020, Exp. 08 2022 from the accused. While following the proper procedure, the recovered articles and the offending bus were taken into custody.”

During investigation it was found that the recovered articles had been supplied by M/s SSG Medicos, Sri Ganganagar against bills and the said bills were also produced before the Police. Based on the investigation, the petitioner were found innocent and the police prepared a cancellation report on 11.05.2022.

The said cancellation report was presented in the court and an application for discharge of the accused/petitioners was moved before the concerned Court. However, vide order dated 11.05.2022 the Special Court dismissed the application of the police and took cognizance of the cancellation report and summoned Branch Manager, MS Chandra Cargo, Nokha, Bikaner, Mukesh Panchariya owner of M/s Shri Shyam Drugs and Surgico, Nokha, Bikanere, Sukhwinder Kaur owner of M/s SSG Medicos, Sri Ganganagar and Mahavir Parsad son of Anoop Chand r/o Bikaner owner of the Bus to face trial in the FIR in question as accused.

3. The Counsel for the petitioner-Ramesh Kumar contends that the cancellation report dated 15.04.2022 (P-1) was submitted to the Court. The statement of the SHO P.S. Khuian Sarwar was recorded at that time and the said statement dated 28.04.2022 detailing the investigation conducted by the police is attached as Annexure P-1/A. Despite having found the accused to be innocent he has been summoned by the court while taking cognizance

under Section 190 and 193 Cr.PC. He contends that Mukesh Panchariya who was a licenced stockist of the medicines had supplied the same vide proper invoice to one M/s SSG Medicos, Sri Ganganagar owned by one Sukwhinder Kaur who was also a licensed chemist. The medicines were dispatched through Chandra Cargo who sent the cargo to Sri Ganganagar through the bus in question driven by Mulla Ram, the conductor of which was Ramesh Kumar. Since the price of fuel was cheaper in Punjab, the bus was taken from Rajasthan into Punjab and on its return after refueling it was stopped and checked and recovery allegedly affected. He contends that after due investigation since the cancellation report had been filed, the petitioner was in custody since 10.01.2022 and was a first time offender his further incarceration was not warranted as the provisions of Section 37 of the NDPS Act were *prima facie* satisfied in the present case on account of filing of the cancellation report.

4. The learned Counsel for the petitioner-Moola Ram vehemently has reiterated the arguments as raised by the counsel for the petitioner-Ramesh Kumar. He contends that the co-accused have been granted the concession of anticipatory bail.

5. The Counsel for the State on the other hand while referring to the reply dated 23.01.2023 has enumerated the sequence of events leading to the taking of the cognizance by the court. He contends that though the investigating agency has found the accused to be innocent, however, since they had been summoned on the basis of the cognizance taken by the Special Court, the accused ought not be granted the concession of bail as the recovery from them is of commercial quantity of contraband and Section 37 of the NDPS Act would be a bar to the grant of bail. He however, admits

that till date even the list of witnesses have not been supplied to the Court for the purpose of proceeding with the Trial.

6. I have heard learned Counsel for the parties.

7. Admittedly, the petitioners were arrested on 10.01.2022 and the recovery allegedly affected from them. During the course of investigation it transpired that they purportedly transported the medicines on behalf of Mukesh Panchariya to M/s SSG Medicos Sri Ganganagar owned by Sukhwinder Kaur, a licenced chemist. On verification of the bills, the police prepared a cancellation report on 11.05.2022. However, the court while disagreeing with the same took cognizance and summoned the petitioners and various co-accused. Once the petitioners have been found to be innocent by the investigating agency and are first time offenders, a *prima facie* satisfaction under Section 37 of the NDPS Act can be recorded that the petitioners have not committed the offence in question and were not likely to commit the same in future. Even otherwise, the list of witnesses have yet to be supplied to the Court and as such the Trial of the present case is not likely to be concluded anytime soon. As the petitioners are in custody since 10.01.2022, their further incarceration is not required more so when some of the co-accused have been granted the concession of anticipatory bail by this Court vide orders Annexure P-7 and P-8.

8. Thus, without commenting on the merits of the case, the petitioners-**Ramesh Kumar** son of Sh. Ganga Ram and **Moola Ram** son of Sh. Hukma Ram are ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

9. The petitioners shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and

inform in writing that they are not involved in any other crime other than the present case.

10. In addition, the petitioners (or any person on their behalf) shall prepare an FDR in the sum of Rs.50,000/- each and deposit the same with the Trial Court. The same would be liable to be forfeited in accordance with law in case of the absence of either of the petitioners from the Trial without sufficient cause.

The Petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 24, 2023
Vinay

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