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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-58911-2022 (O&M)
Date of Decision: 29.03.2023

(I)
Baru Sharma

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-8519-2023 (O&M)

(II)
Gurpal Singh @ Sonu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Mikhail Kad, Advocate,
for the petitioner in CRM-M-58911-2022.

Mr. Aminder Singh, Advocate,
for the petitioner in CRM-M-8519-2023.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

Both the petitions have been filed seeking grant of regular bail
and the same are being taken up together with the consent of learned
counsel for the parties since they arise of the same FIR. Both the petitions

are successive bail petitions since earlier bail petitions were dismissed as withdrawn on 27.09.2022 in CRM-M-33983-2022 and CRM-M-40093-2022.

Both the learned counsels for the petitioners have submitted that it is a case where the petitioners have been falsely implicated because of the political enmity and submitted that both the petitioners are in custody from 03.04.2022 which is almost one year and after the investigation of the case, challan has been presented and one witness has been examined in chief. They submitted that the allegations against the petitioners were with regard to alleged recovery of 55 kgs. of poppy husk jointly from them which included the weight of 5 bags as well. They further submitted that it is a case where it is yet to be ascertained as to whether the quantity falls in the category of commercial quantity or not because the poppy husk included the bags as well and apart from the above, two persons were apprehended with the alleged poppy husk of 55 kgs and therefore the entire quantity would not fall in the category of commercial quantity.

Both the learned counsels have further submitted that both the petitioners are not involved in any other case and have got clean antecedents and they have already faced incarceration for about 1 year and in view of the aforesaid facts and circumstances, both the petitioners may be considered for the grant of regular bail.

On the other hand, Ms. Akshita Chauhan, learned Deputy Advocate General, Punjab has submitted that it is correct that both the petitioners are in custody from 03.04.2022 which is almost 1 year and now one witness has been examined in chief. She also submitted on

instructions that it is also correct that both the petitioners are not involved in any other case. She has however opposed the grant of bail on the ground that the total quantity was 55 kgs. of poppy husk and the commercial quantity as defined under the NDPS Act is 50 kgs. and therefore the prayer of the petitioners would be hit by the bar contained under Section 37 of the NDPS Act .

I have heard the learned counsel for the parties.

The petitioners are in custody for about 1 year. Both the petitioners were allegedly caught alongwith 55 kgs. of poppy husk which may have included the weight of the bags and the total number of bags were five. The commercial quantity under the NDPS Act is 50 kgs. Therefore it is yet to be ascertained as to whether the aforesaid quantity falls under the commercial quantity or not. Apart from the above, both the petitioners have already faced incarceration for about 1 year and as per the learned counsels for the parties, the petitioners are not involved in any other case and have got clean antecedents. One witness in part has also been examined. Therefore this Court is of the view that at least at this stage for the purpose of considering the grant of bail to the petitioners, the bar contained under Section 37 of the NDPS Act will not apply since the total weight is a debatable issue.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioners.

Consequently, both the petitions are allowed. Both the petitioners shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate

concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

29.03.2023

(JASGURPREET SINGH PURI)
JUDGE

rakesh

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