

CRM-M-1308-2024 &
CRM-M-55119-2024

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214 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1308-2024

Date of Decision : 05.12.2024

AJAYPAL SINGH

-PETITIONER

V/S

STATE OF PUNJAB

-RESPONDENT

CRM-M-55119-2024

MALKIT SINGH

-PETITIONER

V/S

STATE OF PUNJAB

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Kushagra Mahajan, Advocate
for the petitioner in CRM-M-1308-2024

Ms. Anupam Bhanot, Advocate,
for the petitioner in CRM-M-55119-2024

Ms. Manjot Kaur, AAG, Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Since both the petitions are arising out of a common FIR, therefore, being amenable for common decision, same are taken up together.

2. Through the instant petitions cast under Section 439 of the Cr.P.C., the petitioners pray for them being granted the concession of regular bail, in case FIR No.40 dated 01.05.2023, under Sections 21(c)/29/61/85 of the the Narcotic Drugs and Psychotropic Substance Act, 1985, registered at P.S. Sarai Amant Khan, Disrtrict Tarn Taran.

3. Succinctly stated, the recovery of 750 grams of heorin from

the possession of the petitioners has constituted the bedrock for registration of the present FIR.

4. The learned counsel for the petitioners opt not to address any arguments on merits of the case, rather confines the sphere of his arguments only to the period of incarceration suffered by the petitioners, besides the stage of trial. They submit that, since the trial is at its initial stage, inasmuch as none of the total 16 prosecution witnesses has yet been examined, therefore, no fruitful purpose would be served by keeping the petitioners behind the bars, who have already suffered incarceration of approx. more than 1 ½ years, as on today.

5. *Per contra*, the learned State counsel vociferously opposes the grant of regular bail to the petitioner, on the ground that, since the recovered contraband falls within the category of “commercial quantity”, therefore, in view of the statutory bar engrafted in Section 37 of the N.D.P.S. Act, the petitioner does not deserve the concession of bail.

6. She, on instructions imparted to her by the official concerned, verifies that the challan was presented on dated 26.10.2023, and charges were framed on dated 03.05.2024, but none of the total 16 prosecution witnesses has been examined so far.

7. She has also filed a custody certificate *qua* the petitioners today in court, which is taken on record. A perusal thereof reveals that the petitioners have suffered incarceration of 01 year 07 months and 01 day, as on today.

8. This Court has heard the submissions made by the learned

counsels for the parties concerned, and perused the entire record.

9. Although, it is not under dispute that the recovered contraband falls within the ambit of “commercial quantity”, thus attracting the rigor of Section 37 of the N.D.P.S. Act, however, it is also not under dispute that sufficient period of incarceration dilutes the stringent conditions of Section 37 of the N.D.P.S. Act. Gainful reference in this regard can be made to “**Rabi Prakash Versus The State of Odisha**”, **Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein, the Hon’ble Supreme Court has discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

10. Therefore, be that as it may, considering the fact that: (i) as per the custody certificate, the petitioners has suffered incarceration of 01 year 07 months and 01 day, as on today; (ii) there is no likelihood of the trial concluding anytime soon inasmuch as none of the total 16 prosecution witnesses has yet been examined; this Court deems it appropriate to grant the concession of regular bail to the petitioners. Therefore, without commenting upon the merits and circumstances of the present case, the

present petitions are **allowed**. The petitioners are ordered to be released on bail on furnishing of their respective bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

11. However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petitions only.

12. All pending application(s), if any, also stand **disposed** of accordingly.

13. A photocopy of this order be placed on the file of the connected case.

December 05, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No