

CRM-M-10724-2024 &
CRM-M-25952-2024

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217 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10724-2024
Date of Decision : 11.12.2024

GURSEWAK SINGH		-PETITIONER
	V/S	
STATE OF PUNJAB		-RESPONDENT

CRM-M-25952-2024

RANJIT SINGH		-PETITIONER
	V/S	
STATE OF PUNJAB		-RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Vipin Mahajan, Advocate
for the petitioner in CRM-M-10724-2024.

Mr. Karnail Singh Ahhi, Advocate,
for the petitioner in CRM-M-25952-2024.

Ms. Avneet, 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.30, dated 09.09.2023, under Sections 21, 25 and 29 of the the Narcotic Drugs and Psychotropic Substance Act, 1985, registered at Police Station Special Operation Cell Amritsar, Intelligence Wing (CID), District Gurdaspur.

3. Succinctly, the prosecution story as culled out by reading of the FIR in question, is extracted hereinafter:

“Today, I SI along with SI Nivrat Pal Singh and HC Rajesh Kumar were present at Gandhi Chowk Batala. A Secret Informer came present and gave information that Amarjit Singh S/o Inderjit Singh, resident of Bolewal, Batala District Gurdaspur, Gursewak Singh son of Amarjit Singh R/o Bolewal Batala, District Gurdaspur, Sher Singh S/o Piara Singh r/o Bolewal Batala, District Gurdaspur and Ranjit Singh S/o Mohinder Singh r/o Sekhwan District Gurdaspur along with other colleagues are indulging in smuggling of heroin. In this trade, Dalbir Kaur wife of Amarjit Singh is also involved. The Secret Informer also informed that whenever Amarjit Singh goes for supply of heroin he takes his wife also, so that police does not become suspicious. The Secret Informer further told that today aforesaid Amarjit Singh, Dalbir Kaur, Gursewak Singh, Sher Singh and Ranjit Singh are roaming in their Tata Indica Car No. PB10-CY-5466 in the area of M.S College Amritsar Batala Bypass for supply of heroin and they are waiting for some party. If Naka is laid then the accused can be apprehended and heroin can be recovered. The information is reliable and offence U/s 21, 25, 29 NDPS Act is made out. The ruqa is sent Dasti through HC Rajesh Kumar for registration of FIR. FIR be registered and its number be made known. Special Report be sent to Illaqa Magistrate. Control room be informed through wireless. The Senior Officer may be requested to sent one more part at the spot. I along with my colleagues are going towards the site. In the area of Gandhi Chowk Batala, time 05:50 PM signed SI Amandeep Singh.”

4. What reflects from the perusal of the instant FIR (*supra*), is that the recovery of contraband was effected from the dashboard of the car, which was being driven by the petitioner-Gursewak Singh, whereas, the other co-accused Ranjit Singh was sitting on the back seat of the car.

5. Learned counsel for the petitioner, in asking for the relief (*supra*), submits that the recovery of contraband, i.e. 270 grams of heroin, which was effected from the present petitioner is marginally over and above the commercial quantity, as per the schedule attached to the NDPS Act, the commercial quantity being over and above 250 grams.

6. Though learned counsel for the petitioners tried to point out some illegality, in the manner, in which the recovery of contraband was

alleged to have been effected, however, the main thrust of their argument is towards the days of incarceration as suffered the petitioners, i.e. about 1 year and 03 months as on today. He submit that, the trial is not progress in the trial as no prosecution witness has been examined so far.

7. *Per contra*, the learned State counsel vociferously opposes the grant of regular bail to the petitioners, 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 petitioners do not deserve the concession of bail, as the twin conditions as envisaged therein, are fulfilled.

8. She, on instructions imparted to her by the official concerned, verifies that charges were framed on dated 01.04.2024, but no prosecution witness has been examined so far.

9. 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 02 months and 28 days, as on today. The petitioner-Gursewak Singh, is involved in two other cases under the NDPS Act, whereas petitioner-Ranjit Singh, is stated to be involved in one other case NDPS Act, however, he is on bail.

10. This Court has considered the rival submissions made by the learned counsels for the parties concerned, and perused the entire record.

11. 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.”

12. Therefore, be that as it may, considering the fact that: (i) as per the custody certificate, the petitioners have suffered incarceration of 01 year 02 months and 28 days, as on today; (ii) there is no likelihood of the trial concluding anytime soon inasmuch as no prosecution witnesses has been examined till date whereas charges were framed on 01.04.2024; (iii) the quantity of contraband recovered is marginally above the commercial quantity, 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.

13. 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.
14. All pending application(s), if any, also stand **disposed** of accordingly.
15. A photocopy of this order be placed on the file of the connected case.

December 11, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

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