



CRM-M-14408-2024 and connected case 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105 (I) CRM-M-14408-2024
Date of Decision : October 14, 2024

SUBASH ARORA -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

(II) CRM-M-36968-2024

VIJAY KUMAR -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Brijeshwar Singh Bhalla, Advocate
for the petitioner (in CRM-M-14408-2024).

Mr. Vipul Jindal, Advocate
for the petitioner (in CRM-M-36968-2024).

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. The amenability of both these petitions for being decided through a common verdict originates from them being arising out of a common FIR, besides originating from common relief(s) being yearned therein.
2. To be precise, the petitioners, in both these petitions, crave for indulgence of this Court for them being enlarged on regular bail, in case FIR No.301 dated 14.12.2022, under Sections 18 and 27(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the

**CRM-M-14408-2024 and connected case****2**

‘N.D.P.S. Act’), registered at P.S. Division-A, District Police Commissionerate Amritsar.

ALLEGATIONS IN THE FIR

3. The present FIR derives its origin from the statement made by one S.I. Sarwan Singh. Concisely and compendiously, what has constituted the bedrock for registration of the present FIR, is the recovery of 700 intoxicant (Kamini) tablets and ₹ 8,000/- cash from the possession of petitioner Vijay Kumar, besides the recovery of 1960 intoxicant (Kamini) tablets and ₹ 25,000/- cash from the possession of petitioner Subhash Arora.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PETITIONERS

4. The learned counsels for the petitioners draw attention of this Court towards the definition of “opium”, as becomes enclosed in Section 2(xv) of the N.D.P.S. Act, to argue that the contents of the allegedly recovered tablets cannot be, by any stretch of imagination, be termed as “opium”, as the F.S.L. report does not make even a whisper about the percentage of morphine found in the said tablets. The relevant extract of the F.S.L. report is reproduced hereunder:-

REPORT

The contents of the parcels marked 1 & 2 under reference have been analyzed separately by chemical, TLC and instrumental analysis. On the basis of analysis, Morphine has been found present in the contents of the parcels 1 & 2.

5. Nonetheless, the learned counsels for the petitioner submit that, even if for the sake of arguments, the recovered tablets are taken to be falling within the definition of “opium”, yet the same do not fall within the category of “commercial quantity”, as per the Schedule attached with the N.D.P.S. Act.

**CRM-M-14408-2024 and connected case****3**

6. Concluding their arguments, the learned counsels for the petitioners submit that, since there is no likelihood of the trial concluding anytime soon, as none out of the total 11 prosecution witnesses has yet been examined, therefore, no useful purpose would be served by keeping the petitioners behind the bars, who have already suffered incarceration of approx. 01 year.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

7. *Per contra*, the learned State counsel places on record the reply (in CRM-M-14408-2024) and vociferously opposes the grant of bail to the petitioners, on the ground that, huge quantity of contraband has been recovered from them. He further submits that, there is a specific amendment carried out in the N.D.P.S. Act, which requires the entire substance of the drug, instead of only its pure drug content, to be taken into account for analysis. In this regard, he draws attention of this Court towards the hereinafter extracted clarification given by the Assistant Director, Regional Testing FSL, Amritsar, which is enclosed in Annexure R1/T attached with the reply (*supra*).

“Please refer to your D.O. No. 156 dated 05.10.2024 in regard to FIR No. 301 dated 14.12.2022 U/S 18,27(A) ND&PS Act, PS - A Division. It is humbly submitted that in the light of notification no. S.O. 2941(E), dated 18th November 2009 of the Narcotic Drugs and Psychotropic Act 1985, which is reproduced below for ready reference:

“(4) the quantities shown in column 5 and column 6 of the Table relating to the respective drugs shown in column 2 shall apply to the entire mixture or any solution or any one or more narcotic drugs or psychotropic substances of that particular drug in dosage form or isomers, esters, ethers and salts of these drugs, including salts of esters, ethers and isomers, wherever existence of such substance is possible and not just its pure drug content.”

In the above said case we had already submitted the Report No.2458/2022/Toxi./RTFSL/ASR/Pb, dated 07.03.2023, wherein pres-

**CRM-M-14408-2024 and connected case****4**

ence of Morphine is confirmed and in such or similar cases, above said notification may be considered for further proceedings.”

8. Moreover, on instructions imparted to him by the official concerned, the learned State counsel verifies that charges have been framed, but, none of the 11 prosecution witnesses has been examined so far. He also places on record the respective custody certificates of the petitioners.

REASONS FOR ALLOWING THE INSTANT PETITIONS

9. This Court has heard the rival submissions made by the learned counsels for the parties and also perused the record.

10. For a substance to fall within the definition of “opium”, as defined in Section 2(xv) of the N.D.P.S. Act, it must contain more than 0.2 per cent of morphine. However, in the instant case, a perusal of the hereinabove extracted portion of the F.S.L. report makes it apparent that the percentage of Morphine found in the analyzed parcels has not been recorded therein.

11. Moreover, the learned State counsel very fairly concedes that, even if the entire substance of the recovered tablets is taken to be “opium”, yet the same do not fall within “commercial quantity”.

12. Without evincing any opinion on the issue “*whether the recovered tablets fall within the ambit of “opium”, as defined in Section 2(xv) of the N.D.P.S. Act*”, as it requires examination and adjudication by the learned trial Court concerned, this Court proceeds to allow the instant petitions primarily on the grounds that:- (i) the recovered tablets uncontestedly fall within “non commercial quantity”; (ii) the petitioners have suffered incarceration of approx. 11½ months and they have clean antecedents; (iii) there is no likelihood of the trial concluding anytime soon, as none of the 11 prosecution wit-



CRM-M-14408-2024 and connected case

5

nesses has been examined so far.

13. 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 bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

14. 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.

15. A photocopy of this order be placed on file of each connected case.

October 14, 2024
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(KULDEEP TIWARI)
JUDGE

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