



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

219 (I) CRM-M-30315-2024
Date of Decision : November 18, 2024

HARVINDER SINGH -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

(II) CRM-M-34102-2024

AMARDEEP SINGH ALIAS BABBU -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ramanjeet Singh, Advocate
for the petitioner (in CRM-M-30315-2024).

Mr. Parminder Singh Sekhon, Advocate
for the petitioner (in CRM-M-34102-2024).

Mr. Sahil R. Bakshi, A.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Since a common relief is yearned to be reaped through institution of both these petitions, which arise out of a common FIR, therefore, both these petitions are amenable for being decided through a common verdict.

2. To be precise, in both these petitions, the petitioners pray for them being granted the concession of regular bail, in case FIR No.83 dated 10.08.2023, under Sections 21-C/22-C/29 of the N.D.P.S. Act, registered at P.S. Dehlon, District Ludhiana.

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3. Succinctly stated, the recovery of 260 grams of heroin and 55 grams ice from the possession of the petitioners has constituted the bedrock for registration of the present FIR.

4. The learned counsels for the petitioners opt not to address any arguments on merits of the case, rather confine the sphere of their arguments only to the period of incarceration suffered by the petitioners, besides the stage of trial. They submit that, since the trial is at initial stage, inasmuch as, only 01 prosecution witness, out of total 15 witnesses, has been examined so far, therefore, no fruitful purpose would be served by keeping the petitioners behind the bars, who have clean antecedents and already suffered incarceration of approx. 01 year and 03 months.

5. *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.

6. Although the learned State counsel opposes the grant of bail to the petitioners, however, on instructions imparted to him by the official/officer concerned, he verifies that, out of total 15 witnesses, only 01 prosecution witness has been examined so far. He also files the separate custody certificates of the petitioners, which are taken on record.

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

8. Although it is not under dispute that the recovered

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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.”

9. Therefore, be that as it may, considering the fact that: (i) as per the separate custody certificates dated 17.11.2024, as placed on record by the learned State counsel, both the petitioners have clean antecedents and both have suffered incarceration of 01 year, 03 months and 03 days till 17.11.2024; (ii) there is no likelihood of the trial concluding anytime soon, inasmuch as, out of total 15 witnesses, only 01 prosecution witness has been examined so far; 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



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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.

10. 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.

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

November 18, 2024
devinder

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No