IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.221 **Case No. : CRM-M-31076-2024**
Decided On : November 05, 2024

Amritpal Singh @ Amrit .... Petitioner

vs.

State of Punjab .... Respondent

Sr. No.306 **Case No. : CRM-M-33527-2024**
Decided On : November 05, 2024

Sanjeev Kumar @ Sunny .... Petitioner

vs.

State of Punjab .... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Ruhani Chadha, Advocate
for the petitioner (in CRM-M-31076-2024).

Mr. Karanbir Singh, Advocate
for the petitioner (in CRM-M-33527-2024).

Ms. Avneet, AAG, Punjab
for the respondent-State of Punjab (in both cases).

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GURBIR SINGH, J. :

1. Vide this common judgment, two afore-stated petitions i.e. **CRM-M-31076-2024** and **CRM-M-33527-2024** shall be decided as facts and circumstances involved in both these petitions are the same and both petitions relate to the same FIR.

2. Prayer in the present petition(s) is for grant of regular bail to the petitioner(s) in FIR No.265 dated 08.09.2023, under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter

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referred to as – NDPS Act), registered at Police Station Rama Mandi, District Jalandhar.

3. As per prosecution version, on 08.09.2023, when the police party was on routine patrolling duty, a motorcycle, on which two persons were sitting, was seen coming from Hoshiarpur side. Upon seeing the police party, they tried to turn the motorcycle but they were apprehended on the basis of suspicion. They had kept one black coloured polythene on the seat of motorcycle. Upon asking their identities, the driver disclosed his name as Amritpal Singh alias Amrit (petitioner in CRM-M-31076-2024) and pillion rider disclosed his name as Sanjeev Kumar alias Sunny (petitioner in CRM-M-33527-2024). Since they expressed their desire to get the search conducted in presence of Gazetted Officer, so, the Assistant Commissioner of Police (ACP) (Central), Jalandhar was called at the spot and accordingly, search was conducted as per rules. From the black coloured polythene, which was kept on the seat of the motorcycle by the aforesaid persons, 260 grams of heroin was recovered, which was taken into possession.

4. Learned counsel for petitioner(s) have argued that the quantity of contraband recovered in the present case is marginally high than the commercial quantity and even weight of polythene bag was not excluded. The 'Consent Memo' and 'Recovery Memo' did not bear signatures of ACP (Central), Jalandhar. So, it cannot be said that search was conducted by him. Reliance has been placed on a judgment passed by a Co-ordinate Bench of this Court in the case titled **Manjit Kaur @ Akki vs. State of Punjab** bearing **CRM-M-11389-2021 (O&M)**, decided on 30.09.2021.

5. Learned State counsel has opposed the prayer made by learned

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counsel for the petitioner(s) and has submitted that the presence of ACP (Central), Jalandhar cannot be doubted at the spot even if his signatures are missing on the Memos. The fate of such omissions is a matter to be considered during trial. However, the quantity of contraband recovered in this case is a commercial one. So, the petitioners are not entitled for bail.

6. I have heard the arguments advanced by learned counsel for the petitioner(s) and learned State counsel.

7. It is specific case of the prosecution that the petitioner(s) desired to be searched from the Gazetted Officer. So, ACP (Central), Jalandhar was called at the spot. He conducted the search. There are no signatures of ACP (Central), Jalandhar on the Consent Memo (Annexure P-4) and Recovery Memo (Annexure P-5). The absence of signatures of the Gazetted Officer cannot be considered a procedural lapse. Rather, it adversely affects the case of the prosecution and it becomes debatable if search was conducted by him or in his presence. Although the said fact would be decided by the learned Trial Court on the basis of evidence, but a doubt is created in the version of the prosecution.

8. Keeping in view that the petitioner(s) are in custody since 08.09.2023 i.e. 01 year and about 02 months and completion of trial would take a long time, this Court is of the opinion that no useful purpose would be served by further detention of the petitioner(s) and therefore, the petitioner(s) are entitled for concession of regular bail.

9. Accordingly, without commenting upon the merits of the case, the present petition(s) are allowed and the petitioner(s) are directed to be released on regular bail, on their furnishing bail bonds/surety bonds, to the

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satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned. The petitioner(s) shall also abide by the following conditions :-

> ***1.*** *The petitioners shall surrender their passports and shall not leave the country without the prior permission of the Trial Court.*
>
> ***2.*** *The petitioners shall give their mobile numbers to the Trial Court and get the same registered, on which SMS shall be received from the CIS and shall not change their mobile numbers during pendency of the case.*
>
> ***3.*** *The petitioners shall not change their residence without prior intimation to the concerned Police Station and the Trial Court.*
>
> ***4.*** *The petitioners shall appear before the Trial Court on each and every date of hearing.*

10. However, nothing observed herein above shall be construed to be an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present bail petition(s).

11. Pending applications, if any, shall stand disposed of along with the present petition.

12. A photocopy of this judgment be placed on the file of other connected matter.

November 04, 2024 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*

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