

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-37176-2023 (O&M)
Reserved on: 29.01.2024
Pronounced on:31.01.2024

Rohit Pandey

...Petitioner

Versus

State of Punjab

...Respondent

2. CRM-M-59545-2023 (O&M)

Pawan Kumar

...Petitioner

Versus

State of Punjab

...Respondent

3. CRM-M-57751-2023 (O&M)

Nand Kumar Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Devinderpal Singh, Advocate
for the petitioner in CRM-M-37176-2023

Mr. Amitabh Tewari, Advocate and
Mr. Anged Patel, Advocate
for the petitioner in CRM-M-59545-2023

Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate and
Mr. Amritpal Singh Maan, Advocate
for the petitioners in CRM-M-57751-2023

Mr. Subhash Godara, Addl. AG, Punjab

Harpreet Singh Brar, J.

1. This common order shall dispose of all three of the above-mentioned cases as they arise from the same factual matrix. However, for the sake of brevity, facts are culled out from CRM-M-57751-2023.

2. The present petition is preferred under Section 439 Cr.P.C. seeking grant of regular bail in FIR No. 32 of 2023 dated 26.02.2023 registered under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances, 1985 (hereinafter referred to as 'NDPS Act') at Police Station Shambu, District Patiala.

3. Briefly, the facts are that on 26.02.2023, ASI Gurwinder Singh received a secret information to the effect that the accused persons namely Dudh Nath, Nand Kumar Singh, Ram Kripal, Dinesh Moriya, Vaishali Bus Owners and Vaishali Bus Manager were smuggling contraband in the form of pills in a bus bearing registration no. UP-43-AT-4038. Accordingly, the police party established a check-post at village Ali Majra, Main G.T. Road Ambala-Rajpura. Around 12:50 PM, the police party intercepted the said bus at the check-post and recovered multiple boxes of tablets alleged to be containing the salt Tramadol. Separate bundles and plastic bags of boxes containing 'Tramadol Prolonged Release Tablets IP, 100 mg, Tramatrast SR 100' were kept concealed at different places in the bus. A total of 25 boxes containing 50 strips, each strip containing 10 tables, were found under the front seat of the bus, while 25 boxes were recovered from the shelf above the driver seat and 49 boxes were recovered from the tool box of the bus. In this way, a total of 49,500 intoxicant tablets, falling in the ambit of commercial quantity, were recovered from the said bus.

4. Mr. Vinod Ghai, learned Senior Counsel assisted by Mr. Arnav Ghai and Mr. Amritpal Singh Mann, Advocates in CRM-M No.57751 of 2023 contended that there is nothing on record to prove the conscious possession of the

petitioners over the alleged contraband. The case set up by the prosecution is based on a secret information. The recovery of the alleged 49,500 tablets of Tramadol Hydrochloride was effected from different places of the bus. The driver of the bus is co-accused Dudh Nath. The prosecution has failed to connect the petitioners either with the driver of the bus or with the alleged recovery to make them liable for any offence under the NDPS Act. The petitioners were travelling in the bus and they have been made a scapegoat. The place from where the recovery was made falsifies the entire case of the prosecution in the absence of the details of Fast Tag of Toll Plaza, Ghaggar through which the bus crossed and reached at the place of recovery. Moreover, as per the case set up by the prosecution, the alleged contraband belonged to the co-accused Rohit Pandey. It was also contended that mandatory compliance of Sections 42 and 50 of the NDPS Act was not made.

5. Learned Senior Counsel further referred to various zimni orders passed by the learned trial Court to contend that the trial of the case is getting delayed due to non-production of the petitioners by the jail authorities and they are behind bars since 26.02.2023 and out of 17 prosecution witnesses, none has been examined so far.

6. Learned counsel for the petitioner(s) in CRM-M No.59545 of 2023 and CRM-M No.37176 of 2023 are behind bars since 18.05.2023 and 01.06.2023 respectively. It was contended that they have been implicated in the present case only on the basis of the disclosure statement suffered by the co-accused while in police custody, which has no evidentiary value in the eyes of law. There is nothing on record to prove the complicity of the petitioners in the alleged occurrence. Further reliance was placed on the judgment rendered by the Hon'ble

Supreme Court in *Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1* to

contend that statement recorded under Section 67 of the NDPS Act cannot be used as confessional statement in trial of offence under the NDPS Act. Further reliance was placed on the judgment by a Coordinate Benches of this Court in *Amandeep Sharma Vs. State of Punjab* passed in CRM-M No.18617 of 2019 on 23.05.2019, 2021 (1) Law Herald 435; *Daljinder Singh @ Jinda Vs. State of Punjab 2019 (1) Law Herald 746* and *Anil Kumar Vs. State of Haryana 2021 (1) Law Herald 435*.

7. Per contra, learned State counsel submitted that name of the petitioners were duly mentioned in the secret information as well as the FIR and all of them were arrested on the spot. In CRM-M No.57751 of 2023, petitioner No.1 Nand Kumar Singh is the second driver of the bus and petitioner No.2 Ram Kirpal Yadav is the cleaner of the bus whereas petitioner No.3 Dinesh Kumar Maurya is the helper. As such, all the petitioners along with driver Dudh Nath are liable for punishment for commission of offence for huge recovery of 49500 tablets of Tramadol Hydrochloride, as alleged in the FIR. It was further contended that the petitioners are resident of Uttar Pradesh and in case, they are granted concession of regular bail, there is every possibility that they will flee from justice and being a flight risk, they are not entitled for regular bail.

8. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that petitioners Rohit Pandey and Pawan Kumar in CRM-M No.37176 and 59545 of 2023 respectively have been nominated in the FIR supra on the basis of the disclosure statement suffered by the co-accused and nothing has been recovered from their conscious possession. It is trite law that statement made under Section 67 of the NDPS Act cannot be used as confessional statement in trial of offence under the NDPS Act. Petitioners Rohit Pandey and Pawan Kumar are behind bars since 01.06.2023 and 18.05.2023 respectively and

the trial is likely to take long time to conclude, therefore, no useful purpose would be served in keeping them behind the bars. Consequently, the petitioners in CRM-M No.37176 and 59545 of 2023 are directed to be released on bail subject to their furnishing personal and surety bonds to the satisfaction of the learned trial Court.

9. Resultantly, CRM-M Nos.37176 and 59543 of 2023 are allowed.
10. As regards CRM-M No.57751 of 2023, petitioners therein along with driver of the bus Dudh Nath have been specifically named in the secret information and when the trap was laid on the basis of said information, huge recovery of 49500 tables of Tramadol Hydrochloride was effected, which falls within the ambit of commercial quantity and therefore, in the absence of any justification to overcome the rigors of Section 37 of the NDPS Act, they do not deserve concession of regular bail. Consequently, the petition in CRM-M No.57751 of 2023 is dismissed.
11. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court. However, the learned trial Court is directed to conclude the trial as expeditiously as possible.

(HARPREET SINGH BRAR)

JUDGE

January 31, 2024

Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No