

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(223)

1.

CRM-M-43145-2023

Vipan Kumar

....Petitioner

Versus

State of Punjab

.....Respondent

2.

CRM-M-45146-2023

Jaspreet Singh

....Petitioner

Versus

State of Punjab

.....Respondent

Date of decision: - 07.05.2024

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Prateek Pandit, Advocate
for the petitioner(s)

Mr. TPS Walia, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

1.

This order will dispose of two petitions i.e., CRM-M-43145-2023 filed by petitioner Vipan Kumar and CRM-M-45146-2023 filed by petitioner Jaspreet Singh.
2.

The said two petitions have been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioners in FIR No.75 dated

21.04.2022, registered under Sections 21(c) & 29 of the Narcotic Drugs & Psychotropic Substances Act and Section 25 of the Arms Act, at Police Station Special Task Force, STF Wing, District SAS Nagar (Mohali).

3. Learned counsel for the petitioners has submitted that in the present case, neither both the petitioners were named in the FIR nor were apprehended at the spot nor any recovery has been effected from them. It is further submitted that recovery of 256 grams of Heroin has been recovered from co-accused of the petitioners, namely, Sunny and the said Sunny has already been granted the concession of regular bail in a petition bearing CRM-M-29226-2023, by a Co-ordinate Bench of this Court, vide order dated 27.07.2023 (Annexure P-3). It is also submitted that in the FIR, one co-accused, namely, Mohit, who was stated to be walking along with the said accused Sunny, has been granted the concession of regular bail by this Court in CRM-M-41445-2022, vide order dated 01.12.2022 (Annexure P-2). It is stated that the recovery of a country made pistol has been made from the said Mohit. Moreover, no recovery has been effected from either of the two petitioners. It is further stated that the petitioners were sought to be implicated solely on the ground of disclosure statement of co-accused Sunny and since no recovery has been effected from the petitioners, thus, the law laid down by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, reported as 2021(1) RCR Criminal 1**, would apply in favour of the petitioners. It is argued that the petitioner Vipin Kumar is in custody since 21.06.2023 and petitioner Jaspreet Singh is in custody since

23.06.2023 and both the said petitioners were granted interim bail by a Co-ordinate Bench of this Court, vide orders dated 21.11.2023 and were released from the custody on 01.12.2023 and 07.12.2023 and have not misused the concession of the said interim bail. It is further argued that in the said circumstances, the present petitions be allowed and the interim orders dated 21.11.2023 be confirmed. It is submitted that there are 19 prosecution witnesses, out of which, only one has been examined and thus, the trial is likely to take time.

4. Learned State counsel, on the other hand, has opposed the present petitions and has submitted that the recovery from Sunny, co-accused of the petitioners, was 256 grams of Heroin, which falls under the category of commercial quantity as the commercial quantity starts from 250 grams and thus, the bar under Section 37 of the NDPS Act would apply.

5. This Court has heard learned counsel for the parties and has gone through the paper-book.

6. Keeping in view the above-facts and circumstances, more so, the fact, that petitioner Vipin Kumar was arrested on 21.06.2023 and petitioner Jaspreet Singh was arrested on 23.06.2023, and that in total there are 19 prosecution witnesses, out of which, only one has been examined and thus, the trial is likely to take time and also the fact that no recovery has been effected from the present petitioners and that the recovery of 256 grams of Heroin has been effected from co-accused Sunny, who has been granted the concession of regular bail by a Co-

ordinate Bench of this Court in CRM-M-29226-2023, vide order dated 27.07.2023 (Annexure P-3) and also the fact that even co-accused Mohit, from whom the recovery of a country made pistol has been effected, has been granted the concession of regular bail by this Court in CRM-M-41445-2022 (Annexure P-2) and the case of the petitioners is on a higher footing than those of the above-said two co-accused and also the law laid down in *Tofan Singh's case (supra)* and also the fact that the Co-ordinate Bench of this Court, vide orders dated 21.11.2023 had released the petitioners on interim bail, which is continuing till date and it is not the case of the State that the present petitioners have misused the said concession of interim bail, the present petitions are allowed and the orders dated 21.11.2023 are made absolute, subject to the petitioners furnishing bail/surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to them not being required in any other case.

7. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present order which are only for the purpose of adjudicating the present bail petitions.

May 07, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No