



CRM-M-43914-2024 and
CRM-M-58557-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218) Date of Decision : 28.11.2024

1. CRM-M-43914-2024

Rupa Masih	...	Petitioner
Versus		
State of Punjab	...	Respondent

2. CRM-M-58557-2023

Ladi Masih	...	Petitioner
Versus		
State of Punjab	...	Respondent

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner in CRM-M-43914-2024.

Mr. Vishal Sharma Haritwal, Advocate
for the petitioner in CRM-M-58557-2023.

Mr. Sahil R. Bakshi, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Both the instant petitions are amenable to be decided together, as the common relief of regular bail has been sought, in case FIR No.130, dated 04.10.2023, under Sections 15, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Tapa Mandi, District Barnala, Punjab, therefore, both the instant petitions are taken up together for adjudication.



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2. Sum and short story put up by the prosecution, can be culled out from perusal of the FIR, which reads as under :-

“Copy of ruqa, Fateh! Today, I, Inspector along with SI Gurbachan Singh 282, ASI Lovepreet Singh 900, ASI Naib Singh 576, HC Daljit Singh 745, HC Kuldeep Singh 828, CII Jagshir Singh 401 and Senior Constable Harpinderjot Singh were riding Govt. vehicle bearing registration No.PB-13BA- 1824 being driven by Senior Constable Harpreet Singh 831 with laptop, printer and investigation kit were present at Main Road Bathinda-Barnala, near Flyover, Barnala side, Tapa in connection with patrolling and in search of suspicious persons. At about 7.45 AM the secret informant came to me and separately informed me that Rupa Singh son of Satpal Masih, resident of Mial Kalana, District Patiala and Harpal Masih @ Pala son of Surinder Masih, resident of Atala, District Patiala etc. in connivance with each other have constituted a gang, who are habitual of bringing poppy husk from outer State and supply the same in Punjab. Today, both of them have loaded huge quantity of poppy husk in a white coloured Verna car bearing registration No.PB-11-DA-1753. They have to go from Sangrur side towards Banthinda side. If, right now, a raid is conducted at main road and vehicles are checked then the above mentioned persons can be apprehended along with huge quantity of poppy husk. Information is reliable and trustworthy. Above mentioned Rupa Masih and Harpal Masih @ Pala have committed offence under sections 15, 25,61/85 NDPS Act by keeping poppy husk in their possession as well as selling the same. In this regard information was sent to SHO, Police Station Tapa via wireless set of the vehicle. Therefore, ruqa has been written against above mentioned Rupa Masih and Harpal Masih @ Pala and same is being sent to the police station by hand through C. Harpinderjot



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Singh 988 for registration of case. The further investigation of case is being handed over to SI Gurbachan Singh. After registration of case be intimated to SI Gurbachan Singh.”

3. On asking for the relief (supra), learned counsel for the petitioners, at the very outset submits, that the petitioners have suffered incarceration of more than 01 year and 01 month, as on today, and till date, only four prosecution witnesses have been examined, out of total 16 witnesses, as cited by the prosecution. They further submit that both the petitioners are not involved in any other criminal case and they have clean antecedents. The final submission made by the learned counsel for the petitioners is that the statutory provision of Section 42 and 50 of the NDPS Act, has not been meticulously complied with by the prosecution. However, this Court, refrains itself from making any observation on such submissions.

4. Learned State counsel, on instructions imparted to him by ASI Karamjit Singh, has opposed the grant of concession of regular bail to the petitioners, on the ground, that the recovery effected in the instant case, falls under the ambit of commercial quantity, as 102 kg. of poppy husk has been recovered and therefore, the rigor of Section 37 of the NDPS Act, comes into operation, and the petitioners do not deserve the concession of relief of regular bail.

5. Learned State counsel has also placed on record the custody certificates dated 27.11.2024, qua both the petitioners, today in the Court. The same are taken on the record.

6. Learned State counsel further on instructions submits that in the instant FIR, final report was filed on dated 19.03.2024, and charges were

framed on dated 16.04.2024. Furthermore, out of total 16 witnesses, as cited



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by the prosecution, till date, only four prosecution witnesses have been examined, whereas six witnesses have been given up, and six witnesses are left to be examined.

7. This Court has considered the rival submissions made by the learned counsel for the parties concerned, and has gone through the record as well, and is of the considered view that the instant petition is amenable to be allowed.

8. It is not in dispute that only four prosecution witnesses have been examined, out of total 16 witnesses, and six prosecution witnesses have been given up, and six witnesses are left to be examined, whereas, both the petitioners have suffered incarceration of more than 01 year and 01 month, as on today, and has clean antecedents. So far as, the rigor of Section 37 of the NDPS Act, is concerned, this Court, in a number of judgments has already observed that long incarceration would dilute the rigor of Section 37 of the NDPS Act.

9. This Court finds vigor from the judgment of the Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023***, wherein, the Court has also 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



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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.”

10. In the recent judgment passed by the ***Hon'ble Supreme Court in Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another, 2024 (3) RCR (Criminal), 494***, it has been specifically held that the right to speedy trial of offenders facing criminal charges is implicit in the broad sweep and content of Article 21. The relevant extract of the same reads as under:-

“18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is



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serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

11. Be that as it may, (i) considering the period of incarceration suffered by both the petitioners, (ii) specifically the fact that the petitioners are not involved in any other case, and has clean antecedents, (iii) till date only four prosecution witnesses have been examined, out of total 16 witnesses; this Court can safely conclude that conclusion of the trial would take long time, and therefore, further incarceration of the petitioners would not serve any useful purpose. Accordingly, both the instant petitions are **allowed**.

12. The petitioners are ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

13. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

14. Photocopy of this order be placed on the connected case file, as numbered above.

(KULDEEP TIWARI)
JUDGE

November 28, 2024
Manpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No