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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-54046-2023
Date of Decision: 03.04.2024

Gurjant Singh @ Janta..... Petitioner

Versus

State of Punjab..... Respondent

CRM-M-65298-2023

Gagandeep Singh @ Gaga..... Petitioner

Versus

State of Punjab..... Respondent

CRM-M-6620-2024

Bhagwant Singh @ Bhappa..... Petitioner

Versus

State of Punjab..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.S. Hundal, Senior Advocate assisted by
Mr. Vikramjeet Singh, Advocate,
for the petitioner in CRM-M-54046-2023.

Mr. Munish Raj Chaudhary Advocate
for the petitioner in CRM-M-65298-2023.

Mr. Vivek Singla Advocate
for the petitioner in CRM-M-6620-2024.

Mr. A.S. Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. These petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners and are being taken up together for final disposal with the consent of the learned

counsels for the petitioners, since they arise out of the same FIR bearing No.127 dated 22.12.2021, under Sections 15, 22, 25, 29, 61, 85 of the NDPS Act, registered at Police Station Tapa, District Barnala.

2. Status report by way of affidavit of Deputy Superintendent of Police, Sub Division Tapa, District Barnala has been filed in CRM-M-54046-2023 by the learned State Counsel in Court today and the same is taken on record.

3. As per the allegation, an information was received by the police that two persons, namely, Gagandeep Singh @ Gaga (Petitioner in CRM-M-65298-2023) and Bhagwant Singh @ Bhappa (Petitioner in CRM-M-6620-2024) were indulged in smuggling of narcotics and thereafter there has been a recovery of 25,000 tablets of *Tramadol* plus 10,000 loose tablets and the total 35,000 tablets from the boot of the car which was being driven by the aforesaid petitioner, namely, Gagandeep Singh @ Gaga. Thereafter, the second accused, namely, Bhagwant Singh was arrested and it was on his disclosure that there was a recovery of 200 tablets from a different place. So far as the petitioner, namely, Gurjant Singh alias Janta is concerned, he was nominated on the basis of the disclosure statement of the petitioner, namely, Gagandeep Singh @ Gaga, by stating that the contraband was to be sold to Gurjant Singh @ Janta because he is running a medical shop.

4. All the petitioners are in custody for about 2 years and 3 months.

5. Learned Senior Counsel appearing on behalf of the petitioner, namely, Gurjant Singh @ Janta in CRM-M-54046-2023 submitted that the petitioner has clean antecedents and he was nominated purely on the basis of

the disclosure statement of the co-accused, namely, Gagandeep Singh @ Gaga and there is no other material to connect the petitioner with the present offence except for the disclosure statement of the aforesaid co-accused and he has already suffered incarceration for about 2 years 3 months and 8 days. He further submitted that the disclosure statement of the co-accused in the absence of any other material to connect the petitioner with the offence is otherwise also not admissible in evidence especially in view of a judgment of the Hon'ble Supreme Court passed in “*Tofan Singh Vs. State of Tamil Nadu*”, *2021(4) SCC 1*. He submitted that considering the aforesaid facts and circumstances of the case, the petitioner may be considered for grant of regular bail.

6. Learned counsel appearing on behalf of the petitioner-Bhagwant Singh @ Bhappa in CRM-M-6620-2024 submitted that so far as the present petitioner is concerned, he is also not involved in any other case and he was wrongly named in the present FIR on the basis of some suspicion but he was not even in the car from where the aforesaid 35,000 tablets were recovered but it was later on when he was arrested then as per the prosecution story, his disclosure statement was recorded and in pursuance thereof, only 200 tablets of *Tramadol* were recovered which do not fall in the category of commercial quantity under the NDPS Act. He submitted that considering his custody as well, he may be considered for grant of regular bail.

7. Learned counsel appearing on behalf of the petitioner-Gagandeep Singh @ Gagga in CRM-M-65298-2023 submitted that although as per the prosecution story, there was a recovery of 35,000 tablets from the

boot of the car in which he was traveling but considering the custody which is 2 years 3 months and 8 days, he may be considered for the grant of regular bail because his incarceration is too long.

8. On the other hand, Mr. A.S. Pannu, learned Assistant Advocate General, Punjab submitted that these are the successive bail petitions which have been filed because of the increased custody of the petitioners. On the factual aspect, he has not disputed the same but he has stated that so far as the petitioner, namely, Gagandeep Singh @ Gaga is concerned, there was a huge recovery of 35,000 tablets of *Tramadol* from the boot of the car in which he was traveling and was caught red handed along with the aforesaid contraband and the recovery is not only huge but it also falls in the category of commercial quantity under the NDPS Act and therefore, the bar contained under Section 37 of the NDPS Act will apply in the present case. So far as the antecedents of the petitioners, namely, Gurjant Singh @ Janta and Bhagwant Singh @ Bhappa are concerned, he has not disputed the same and also not disputed that from the petitioner-Gurjant Singh @ Janta, there was no recovery but from the petitioner, namely, Bhagwant Singh @ Bhappa, there was a recovery of 200 tablets of *Tramadol*, on his own disclosure which does not fall in the category of commercial quantity and all of them are in custody for more than 2 years. He also submitted that as of now, 12 out of 25 witnesses have already been examined.

9. I have heard the learned counsels for the parties.

10. The role of all the petitioners is to be considered separately. So far as the petitioner, namely, Gurjant Singh @ Janta is concerned, as per the learned counsel for the parties, there was no recovery from him and he was

nominated only on the basis of the disclosure statement of the co-accused, namely, Gagandeep Singh @ Gaga and he has clean antecedents and is not involved in any other case. So far as the petitioner, namely, Bhagwant Singh @ Bhappa is concerned, from him there was an alleged recovery of 200 tablets of *Tramadol* from his own disclosure statement after he was arrested since he was named in the FIR but he was not traveling in the car from where the contraband i.e. 35,000 tablets of *Tramadol* was recovered. The aforesaid recovery of 200 tablets from the petitioner, namely, Bhagwant Singh @ Bhappa does not fall in the category of commercial quantity under the NDPS Act and qua him, the bar contained under Section 37 of the NDPS Act will not apply. So far as the petitioner, namely, Gagandeep Singh @ Gaga is concerned, he was traveling in the car from where the aforesaid contraband was recovered which was a huge quantity i.e. of 35,000 tablets of *Tramadol*. All the petitioners have faced incarceration for more than 2 years.

11. After considering the submissions made by the learned counsel for the parties, this Court is of the view that so far as the petitioners, namely, Gurjant Singh @ Janta and Bhagwant Singh @ Bhappa are concerned, the bar contained under Section 37 of the NDPS Act will not apply qua them since there was no recovery from the petitioner-Gurjant Singh @ Janta and so far as the petitioner-Bhagwant Singh @ Bhappa is concerned, there was a recovery of only 200 tablets of *Tramadol* and their custody is also more than two years. Therefore, both the petitioners, namely, Gurjant Singh @ Janta and Bhagwant Singh @ Bhappa deserve the concession of regular bail.

18. Consequently, qua the petitioners, namely, Gurjant Singh @ Janta and Bhagwant Singh @ Bhappa, the petitions are **allowed** and they are

ordered to be released on regular bail on furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

19. So far as the petitioner, namely, Gagandeep Singh @ Gaga is concerned, from him there was a recovery of 35,000 tablets of *Tramadol* which is not only a huge quantity but also falls in the category of commercial quantity. No ground has been made out by the learned counsel for the petitioner for making a departure from the bar contained under Section 37 of the NDPS Act and therefore, qua him, the present petition is hereby **dismissed**.

20. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

03.04.2024

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |