



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

292

Date of Decision:- 03.02.2025
I. CRM-M-24758-2024 (O&M)

HARJINDER SINGH @ MAJOR

Versus

....Petitioner(s)

STATE OF PUNJAB

...Respondent(s)

II. CRM-M-32539-2024 (O&M)

MANDEEP NAGALA

Versus

....Petitioner(s)

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present : Mr. Satnam Singh Gill, Advocate
for the petitioner in CRM-M-24758-2024.

Mr. Vijay Rana, Advocate
for the petitioner in CRM-M-32539-2024.

Mr. Jatinder Pal Singh, Sr. DAG Punjab.

SANJIV BERRY, J. (ORAL)

The instant petitions have been preferred by the petitioners under Section 439 CrPC for grant of regular bail to the petitioners in the following case :-

FIR No.	Dated	Sections	Police Station
75	18.03.2024	18 NDPS Act; (27-A NDPS Act added later on)	Rama Mandi, District Jalandhar



2. It is, *inter alia*, contended by learned counsel for the petitioners that the petitioners are innocent and have been falsely implicated in this case. They submit that the petitioners are not having any criminal antecedents and no alleged recovery ever took place from their possession and they have never indulged in the business of narcotics, as has been alleged in the FIR. They contend that as per the allegations levelled in the FIR, the police party had stopped their car at a *naaka* on suspicion, in which the petitioners were travelling and upon search, 1 KG opium was recovered from petitioner-Mandeep Nagala, while 1500 grams of opium was recovered from an envelope lying in the car. They contend that total recovery does not attract the provisions of Section 37 of the NDPS Act, and in this regard, they have referred to the judgment passed the Full Bench of Hon'ble Himachal Pradesh High Court in the case of ***Ratto Vs. State of Himachal Pradesh*** reported as 2004(1) R.C.R. (Criminal) 501, to say that the rigors of Section 37 NDPS Act would apply to quantity more than 2.5 KG of opium. They further submit that challan has already been presented in the Court and the petitioners are in custody since 18.03.2024. Thus prayed for grant of concession of bail to the petitioners.

3. *Per contra*, learned State counsel while referring to the short replies filed by the State in the respective petitions has assailed these arguments by submitting that the petitioners were found in conscious possession of the contraband weighing 2.5 KG of opium and as such they do not deserve the concession of bail. However, he has not denied the fact that



challan has already been presented in Court, wherein the prosecution has cited 11 witnesses, but none has been examined till date.

4. Heard learned counsel for the parties and perused the record.

5. After considering the rival contentions and perusing the record, it transpires that as per the case of prosecution, petitioners travelling in a car were apprehended on suspicion by the police party, leading to recovery of 1 KG opium from the petitioner-Mandeep Nagala and 1500 grams of opium was recovered from an envelope kept in the car in which they were travelling. The petitioners are in custody since 18.03.2024. Admittedly, after the completion of investigation, challan has been presented in the Court, wherein the prosecution has cited 11 witnesses, but till date none has been examined. As per prosecution version, total recovery of contraband effected from the petitioners happens to be 2500 grams of opium. Therefore, keeping in view the dictum laid down by the Full Bench of Hon'ble Himachal Pradesh High Court, the commercial quantity would be more than 2500 grams of opium. This aspect has not been denied by learned State counsel. Therefore, it is observed that the recovery of contraband in the present case does not attract the rigors of Section 37 of the NDPS Act. As stated above, the petitioners are not having any criminal antecedents and the conclusion of trial to ascertain the criminal liability, if any, of the petitioners, will take sufficient long time. In the circumstances, no purpose would be served by detaining the petitioners any longer.

6. Consequently, without commenting on the merits of the case, the present petitions are allowed. The petitioners are ordered to be released



on bail subject to their furnishing bail bonds/surety bonds to the satisfaction of learned Trial Court/Judge on Duty/Duty Magistrate concerned, if not required in any other case; undertaking to regularly appear on each and every date; not to leave the country without prior permission of the Court; and not to tamper with evidence of prosecution in any manner.

7. It is further made clear that in case the petitioners are found involved in any case under NDPS Act, after their release on bail, it will be open for the prosecution to move an application for cancellation of their bail in accordance with law.

8. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

9. Pending miscellaneous application(s), if any, stands disposed of.

(SANJIV BERRY)
JUDGE

03.02.2025
S.Sharma(syr)

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |