

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. **CRM-M-9251 of 2015**
Date of Decision : 17.08.2015

Rajwant Singh @ RajuPetitioner

Versus

State of Punjab ...Respondent

2. **CRM-M-15455 of 2015**

Subhash ChanderPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Vipul Jindal, Advocate
for the petitioners in both the petitions.

Mr. Gurveer Sidhu, AAG, Punjab.

R.P. Nagrath, J. (Oral)

By this common order the aforesaid two petitions are being disposed of, as prayer in both the petitions is made under Section 439 Cr.P.C. for grant of regular bail in FIR No. 133 dated 22.06.2014 for offences under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act"), registered at Police Station Maqsudan, District Jalandhar.

The facts of the case, briefly stated, are that on 22.06.2014, the police party headed by ASI Ajit Singh of the CIA Staff, Jalandhar apprehended the petitioners who were riding on a motorcycle. The ASI gave an offer to petitioners purportedly under Section 50 of the Act. The petitioners statedly reposed

confidence in the ASI and this lead to the recovery of 250 gms. of heroin from possession of Rajwant Singh-petitioner in CRM-M-9251 of 2015 and 240 gms. of the said commodity from Subhash Chander-petitioner in CRM-M-15455 of 2015.

I have heard learned counsel for petitioners and learned State counsel at considerable length.

Learned counsel for petitioners, vehemently, contended that separate recovery from personal search of each of the petitioner was made and thus the total weight cannot be considered to hold the recovery to be commercial quantity. That in my view would be the question to be determined during the trial whether there was a conspiracy between the two for making them liable for the commercial quantity. The learned counsel relied upon judgments of this Court in **CRM-M-14984 of 2015 (Anu vs. State of Punjab)** decided on 18.05.2015 and **CRM-M-25560 of 2014 (Kulwant Singh @ Kanta vs. State of Punjab)** decided on 16.10.2014 in support of the contention that since individual recovery was effected from both the accused the total quantity recovered cannot be added to bring the culpability within four corners of commercial quantity.

Learned counsel for petitioners further contended that offer made to petitioners is in complete violation of the provision of Section 50 of the Act. The offer mentioned in the memo of consent attached with the paper-book is that the ASI suspected some objectionable substance/thing in their possession or in the motorcycle and therefore, the search was to be conducted. The offer precisely was “*You can get your search*

from me or some Magistrate Sahib or Gazetted Officer". It was thus contended that such an offer in which the option was given with regard to search before the ASI cannot be legal. Sub-section (1) of Section 50 of the Act says that when any officer duly authorized under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

It nowhere authorizes the nature of offer made to petitioners about search before the ASI also.

Hon'ble Supreme Court held in **Sarija Banu (A) Janarthani @ Janani and another vs. State through Inspector of Police, 2004 (12) SCC 266** that the compliance of Section 42 of the Act was mandatory and that was a relevant fact which would engage attention of the Court while considering the bail application.

Learned State counsel has filed affidavit of Deputy Superintendent of Police, Sub Division Kartarpur, Jalandhar for suggesting that Rajwant Singh-petitioner in CRM-M-9251 of 2015 remained a proclaimed offender in another case of similar nature for five years and for that production warrants of petitioner were obtained. I would observe that the State can always oppose the prayer for fresh bail of the petitioner in the said case being a proclaimed offender.

Looking into the aforesaid facts and circumstances, without commenting on merits of cases and the fact that

petitioners are in custody for the past more than one year, instant petitions are allowed and petitioners be admitted to bail on furnishing bail bonds to the satisfaction of the trial Court.

Allowed in the above terms.

August 17, 2015
jk

(R.P. NAGRATH)
JUDGE