

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 12.11.2018

1. CRM-M-11658-2018

Nirvail Singh

... Petitioner

Vs.

State of Punjab

... Respondent

2. CRM-M-16035-2018

Satnam Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipul Jindal, Advocate
for the petitioner (in CRM-M-11658-2018).

Mr. Ashish Aggarwal, Advocate
for the petitioner (in CRM-M-16035-2018).

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in these petitions is for grant of regular bail to petitioners
Nirvail Singh and Satnam Singh in FIR No.09 dated 22.01.2018 under Sections
21/25/29/61/85 of NDPS Act, registered at Police Station Sarhali, District Tarn

Taran.

Learned counsel for the petitioners submit that as per statement of ASI Harjinder Singh recorded under Section 161 Cr.P.C., on receiving a secret information, ruqa was sent to the police station by ASI Balwinder Singh for registration of the FIR and a request was made to Kirpal Singh, DSP, STF, Tarn Taran to reach at the spot. It is further stated that after Kirpal Singh, DSP reached at the spot, an Innova car bearing registration No.PJJ0990 was seen coming from the side of village at high speed and was stopped. Two young persons were present in the car. The driver of the car disclosed his name as Satnam Singh @ Satti and co-passenger disclosed his name as Nirvail Singh. It is further stated by ASI Harjinder Singh that DSP then introduced himself and informed that he had suspicion that they are carrying some intoxicant contraband and they have a right to be searched before him or a Magistrate. On this, both the accused persons reposed faith on DSP and accordingly, consent memo was prepared and thereafter, recovery was effected.

Learned counsel for the petitioners have relied upon the report submitted under Section 173 Cr.P.C., in which a different version has been put up by the police. As per this report, ASI Balwinder Singh, after sending a ruqa to the police station for registration of a case/FIR and making a request to the DSP to reach at the spot, started checking the vehicles and stopped the aforesaid car and he himself introduced to them and gave an offer in terms of Section 50 of the NDPS Act and when both the persons gave an option to be searched before a Gazetted Officer, he prepared non-consent memo separately and then again requested Kirpal Singh, DSP, on phone to come at the spot and after

about 30 minutes, he reached at the spot and thereafter, DSP gave another notice for their search, in which they reposed confidence on him and the search was conducted in presence of the DSP.

Learned counsel for the petitioners further submit that there is a major contradiction in the statement under Section 161 Cr.P.C. of ASI Harjinder Singh and report submitted under Section 173 Cr.P.C. It is further argued that ASI Balwinder Singh is the complainant in the case, who sent the ruqa for registration of the case and later on, himself conducted the investigation and therefore, in view of judgment of the Hon'ble Supreme Court in **Mohan Lal Vs. State of Punjab, 2018 (4) RCR (Crl.) 101**, it will be a debatable issue whether non-joining of second Investigating Officer will have adverse bearing on the facts of the case. It is further submitted that both the petitioners are in judicial custody for the last 10 months and conclusion of the trial will take some time.

Learned State counsel, on instructions from SI Balwinder Singh, and after going the original report under Section 173 Cr.P.C. (in vernacular), has not disputed that the statement of ASI Harjinder Singh recorded under Section 161 Cr.P.C. is part of the aforesaid report under Section 173 Cr.P.C. Learned State counsel has further submitted that petitioner Nirvail Singh is involved in one more case under the NDPS Act, where petitioner Satnam Singh is not involved in any other case.

In reply, learned counsel for petitioner Nirvail Singh has submitted that the petitioner is on bail in the aforesaid case/FIR and this fact is not disputed by learned State counsel.

Without commenting anything further on merits of the case, considering the aforesaid facts, both these petitions are allowed and petitioners Satnam Singh and Nirvail Singh are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

Petitions are disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

12.11.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No