

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

(1) CRM-M-24947 of 2018 (O&M)
Decided on:- October 15, 2018.

Gurpinder Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

(2) CRM-M-31056 of 2018.

Gurcharan Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Neeraj Madaan, Advocate
for the petitioner in CRM-M-24947 of 2018.

Mr. J.S. Warring, Advocate
for the petitioner in CRM-M-31056 of 2018.

Mr. Tanvir Joshi, AAG, Punjab.

HARI PAL VERMA, J.

This order shall dispose of the aforementioned two petitions filed by petitioners Gurpinder Singh and Gurcharan Singh under Section 439 Cr.P.C. for grant of regular bail in common FIR No.10 dated 16.01.2018 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act) registered against them at Police Station Sadar Jalalabad (W), District Fazilka.

However, for convenience and clarity, the detailed order is being passed in the petition bearing No. *CRM-M-24947 of 2018*.

CRM-36911-2018

Prayer in this application filed under Section 482 Cr.P.C. is for placing on record the copy of translated version of the relevant extract of the Challan/final report under Section 173(4) Cr.P.C. (Annexure P-3).

The document Annexure P-3 is taken on record subject to all just exceptions.

CRM stands disposed of.

CRM-M-24947-2018

As per the FIR, on 16.01.2018 when the police patrolling party had reached the canal bridge of village Bhamani Wala, one informant got their vehicle stopped and gave a secret information that accused Jaswant Singh son of Arud Singh and Surjit Singh son of Jaswant Singh, caste Rai Sikh, residents of village Kateya Wala alias Arniwala, Police Station Sadar Jalalabad, Gurbinder Singh son of Mukhtiar Singh, caste Rai Sikh, resident of village Bohlepur (petitioner herein) and Gurcharan Singh son of Khushal Singh, caste Rai Sikh, resident of village Chak Mangla, Police Station Lohiya (petitioner herein) were riding on the motorcycles and they stopped their motorcycles on the way of village Bahmani Wala towards Toteya Wala on the Kacha path and were sitting inside the room built near the road side. They all are in habit of selling heroin. They have some quantity of original heroin, whereas one packet of duplicate heroin and are cheating the public, while selling the duplicate heroin to the public, who are habitual in taking intoxicant

after showing the sample of original heroin. On the basis of secret information, the accused were arrested in the case as they were found in possession of the contraband.

Learned counsel for the petitioners have argued that the FIR was registered against the petitioners on the basis of mere suspicion. The police has failed to comply with the mandatory provisions of the NDPS Act. As per the prosecution version, gazetted officer i.e. DSP Jalalabad took sufficient time to come on the spot for conducting search of the petitioners and other co-accused. During that time, SI Angrej Kumar, incharge CIA Fazilka along with other police officials waited for the DSP, Jalalabad on the road leading from village Bahmni Wala to village Chak Toteya Wali, which is the main and busy road and is also a connecting road with Jalalabad city, but the police party failed to join any independent witness. The alleged recovery is non-commercial and, therefore, the provisions of Section 37 of the NDPS Act are not attracted in the case. Even the provisions of Section 50 of the NDPS Act have not been complied with.

On the other hand, learned State counsel has argued that the recovery has been effected from the possession of the petitioners in the presence of a gazetted officer and, therefore, the provisions of Section 50 of the NDPS have duly been complied with. The petitioners were not only selling the original heroin, but were also indulged in selling the duplicate heroin projecting it as original. The challan in the case has already been presented.

I have heard learned counsel for the parties.

In the present case, the recovered contraband was sent to the Forensic Science Laboratory, Bathinda and the report dated 06.03.2018 prepared by the concerned chemical analyst suggests that there was a quantity of diacetylmorphine (heroin) 32.46% in Parcel-1 and 27.86% in Parcel-2.

Therefore, considering the fact that the Challan in the case has been presented and the FSL report reveals that there were contents of heroin in the recovered contraband, this Court does not find any reason to grant regular bail to the petitioners.

Accordingly, both the petitions, being devoid of any merit, are dismissed.

However, it is made clear that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case in accordance with law without being influenced with these observations in any manner.

Photocopy of this order be placed on the file of other connected case.

October 15, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No