

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

(i) CRM No.M-37588 of 2017 (O&M)

Rajinder Kumar @ Ashu

...Petitioner

VERSUS

State of Punjab

...Respondent

(ii) CRM No.M-43546 of 2017 (O&M)

Maninder Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

Date of Decision: August 14, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pranav Handa, Advocate for
Mr.R.S.Bajaj, Advocate
for the petitioner (in CRM No.M-37588 of 2017).

Mr.Ashok Giri, Advocate
for the petitioner (in CRM No.M-43546 of 2017).

Mr.Karanbir Singh, AAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together as these
have arisen from same FIR.

Petitioners have filed these petitions under Section 439 Cr.P.C.

for grant of regular bail in case FIR No.145 dated 25.05.2017 under

Sections 409, 380, 120-B IPC and Section 22 of the NDPS Act, registered at Police Station Nakodar Sadar, District Jalandhar (Rural).

Notice of motion was issued. Learned State counsel appeared and contested the petitions.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

As per the FIR, the allegations are that co-accused Asha Rani, who was posted as Staff Nurse in the Drug De-Addiction Centre, Nakodar, in connivance with other persons, got medicines from the stock by way of tampering the stock and sold the same to present petitioner Rajinder Kumar @ Ashu, who further sold the said medicines to drug addicts in Nakodar city and other adjoining villages. As per the allegations, Rajinder Kumar @ Ashu, Maninder Singh and other co-accused have been apprehended. From accused Rajinder Kumar @ Ashu, 400 tablets containing salt Buprenorphine were recovered, which fall under commercial quantity. Similarly, from petitioner Maninder Singh, 300 tablets containing salt Buprenorphine were recovered, which also falls under commercial quantity. Section 37 of the NDPS Act bars the grant of bail to the accused in the case of commercial quantity.

Learned counsel for the petitioner, at the time of arguments, argued that recoveries have been effected from the personal search and search was not got conducted in the presence of a Magistrate or Gazetted Officer.

The Hon'ble Supreme Court in *Vijaysinh Chandubha Jadeja vs. State of Gujarat, 2011(1) SCC 609*, has held that as per Section 50 of the NDPS Act, Investigating Officer is to give option to the accused and has

to inform the right of the accused to get his search in presence of a Magistrate or Gazetted Officer, if the accused requires so, that he be searched in presence of the Gazetted Officer or Magistrate, then, as per law laid down by the Hon'ble Apex Court, the accused be taken preferably to nearest Magistrate, who enjoys more confidence of the common man compared to any other officer. In this judgment, Hon'ble Supreme Court has further held that it would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well. The Hon'ble Apex Court has nowhere held that search must be conducted, in all cases, in the presence of Magistrate, which means that it is not necessary to take the accused to a Magistrate, if he doesn't opt for it. Section 50 gives power of option to the apprehended person that he can get his search conducted in the presence of Magistrate or Gazetted Officer or can repose confidence in the empowered officer under the NDPS Act, who can make the search.

Keeping in view the facts and circumstances of the case and in view of provisions of Section 37 of the NDPS Act, I do not find it a fit case where petitioners are entitled to benefit of regular bail.

Therefore, finding no merit in both the petitions, the same are dismissed.

August 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No