

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

205

(1) CRM-M-12202-2020

Sarabjit Singh @ Sabby ... Petitioner
Versus
State of Punjab ... Respondent

(2) CRM-M-12936-2020 (O&M)

Sagar ... Petitioner
Versus
State of Punjab ... Respondent

Decided on : 02.09.2020

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Umesh Aggarwal, Advocate,
for the petitioner in CRM-M-12202-2020.

Mr.D.S.Gandhi, Advocate,
for the petitioner in CRM-M-12936-2020.

Mr.H.S.Sullar, DAG, Punjab.

(The proceedings are being conducted through video conferencing,
as per instructions.)

G.S. Sandhawal, J. (Oral)

Petitioners, by way of present petitions, filed under Section 439 Cr.P.C., seek regular bail in FIR No.2 dated 01.01.2020 registered under Sections 21, 29 of NDPS Act and Sections 25, 54, 59 of Arms Act at Police Station Jhabal District Tarn Taran.

Counsel for the petitioners have contended that the petitioners are first-time offenders and there are no other case registered against them. It is submitted that the recovery from the petitioners is not commercial in nature though the joint recovery from the persons of the occupants of the vehicle may be commercial and therefore, the petitioners are entitled for the benefit of bail.

It is submitted that they are in custody since last 8 months.

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State Counsel, on the other hand, has opposed the bail application on the ground that the total recovery from the 5 persons travelling in Innova vehicle having registration No.PB13-BB-4905 was to the extent of 722 grams and therefore, it would amount to commercial quantity. It is submitted that one of the co-accused, Jasbir Singh was also carrying a pistol of .45 bore along with 5 cartridges. Challan has been presented on 27.07.2020 and investigation is complete and the petitioners are not required in any other case of similar nature.

A perusal of the FIR would go on to show that on account of a surprise checking done, the vehicle had been stopped and the 5 persons including the 2 petitioners had been searched. The heroin which was recovered is to the extent of 50 grams from Sarabjit Singh, who was the driver of the vehicle whereas Sagar was sitting at the back and had 100 grams of heroin. The contraband was being carried in the pockets of their pants in polythene carry-bags.

The regular bail of the petitioners was declined by the Addl.Sessions Judge, Tarn Taran on 05.03.2020 by noticing that during investigation, it was found that they are all in drug trade and the total quantity of the recovery would take it to commercial level and therefore, stringent provisions of Section 37 of the NDPS Act would be applicable. It was further observed that if the accused would be released on bail, there was every likelihood that they would again indulge into the said drug trade which would be adversely detrimental to the vitals of society.

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The custody certificates have also been filed showing that the petitioners have no other case similar in nature against them and have also gone detention of over 8 months as the FIR was lodged on 01.01.2020. The challan has been presented on 26.06.2020 and the investigation is complete but charge, as such, has not been framed. Keeping in view the fact that Court hearings have been affected by the COVID-2019 pandemic, matter is now stated to be fixed for 11.09.2020, for the said purpose.

Counsel for the petitioners has also placed reliance upon the judgment in **Kayum Khan Vs. State of Haryana 2016 (2) RCR (Criminal) 128**, in support of the contention that conscious possession would be a moot point which would be addressed by the Trial Court and whether the contraband carried by the other persons could be fastened upon the petitioners.

The said issue would be debatable issue which have to be gone into by the Trial Court. Accordingly, keeping in view the fact that recovery from the persons of the petitioners is below the commercial level and their antecedents as such are also clean and the fact that they have undergone 8 months of detention, no useful purpose would be served by keeping them in further detention.

Resultantly, the present petitions are allowed and the petitioners shall be released on regular bail, to the satisfaction of the Ilqa/Duty Magistrate, Amritsar.

**(G.S. SANDHAWALIA)
JUDGE**

SEPTEMBER 2, 2020
sailesh

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No