

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

Decided on: 08.07.2020

1. CRM-M No.49935 of 2019 (O&M)

Dalwinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M No.15869 of 2020 (O&M)

Mandeep Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ankit Rana, Advocate
for the petitioner (in CRM-M-49935-2019)

Mr. Vaibhav Gupta, Advocate
for the petitioner (in CRM-M-15869-2020)

Mr. A.P.S. Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in these petitions is for grant of regular bail to the petitioners namely Dalwinder Singh and Mandeep Singh in FIR No.205 dated 05.09.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Sirhind, District Fatehgarh Sahib.

Counsel for the petitioner(s) has argued that as per the allegations in the FIR, the police party headed by SI Suresh Kumar was on patrol duty, when the petitioners Dalwinder Singh and Mandeep

Singh, who were coming on an un-numbered motorcycle were stopped on account of suspicion and a Rapat No.38 was entered. Thereafter, SI Suresh Kumar reached at the spot where ASI Hans Raj was present and he produced Dalwinder Singh and Mandeep Singh, before him. It is further submitted that in pursuance to the notice given by SI that both the petitioners have a right to be searched before the Magistrate or Gazetted Officer, both of them reposed confidence in him and thereafter, the search was conducted by SI Suresh Kumar and from the search of the petitioner – Dalwinder Singh, 09 Buprenorphine injections of 02 ml each were recovered and from the search of the petitioner – Mandeep Singh 07 bottles of Pherniramine Maleate injections of 10 ml each were recovered.

Counsel for the petitioner(s) has further submitted that since the recovery was effected separately from both the accused, the same falls under the non-commercial quantity as it was less than 20 mls. Counsel for the petitioner(s) has also submitted that it will be a debatable issue to be decided during the course of trial whether the proper procedure was followed while giving the notice under Section 50 of the NDPS Act. Lastly, it is argued that the petitioners are the first offenders and they are not involved in any other case.

Counsel for the State has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioners are in custody since 05.09.2019; they are the first offenders and are not involved in any other case and

the conclusion of the trial will take long time and also in view of the judgment passed by the Hon’ble Supreme Court in “*Amarsingh Ramjibhai Barot vs State of Gujarat*”, 2005(7) SCC 550, wherein it has been held that the recovery effected from two persons individually cannot be clubbed so as to bring it within the meaning of “commercial quantity” as nothing has come on record that there was a conspiracy or meeting of mind between both the accused arrested at the spot, these petitions are allowed and the petitioners are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

08.07.2020

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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No