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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 06.09.2021

1. CRM-M No.12327 of 2021(O&M)

Rajinder Kumar

.....Petitioner

Vs

State of Punjab

.....Respondent

2. CRM-M No.3948 of 2021(O&M)

Gurjit Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Mikhail Kad, Advocate
for the petitioner in CRM-M No.12327 of 2021.

Mr. Puneet Sharma, Advocate
for the petitioner in CRM-M No.3948 of 2021

Mr. Bhupender Beniwal, AAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

Vide this common order, CRM-M No.12327 of 2021
titled Rajinder Kumar Vs. State of Punjab and CRM-M No.3948
of 2021 titled Gurjit Singh Vs. State of Punjab are being
disposed of.

CRM No.28318 of 2021 in CRM-M No.12327 of 2021

For the reasons mentioned in the application, the same is allowed. Accompanying documents are taken on record.

Main cases

Petitioners seek grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.260 dated 05.08.2020 registered under Section 22 of the NDPS Act at Police Station Patran District Patiala.

Prosecution story started with the allegations that on the basis of secret information, the FIR was registered. Pointed allegations were made against Rajinder Kumar and Gurjit Singh that they are involved in the business of intoxicant tablets by bringing the same from Delhi. A naka was installed. Rajinder Kumar and Gurjit Singh were apprehended along with the car, where large quantity of intoxicant tablets were recovered. The car belongs to Gurjit Singh. Gurjit Singh was driving the car, whereas Rajinder Kumar was co-occupant of the car on the front seat. The contraband was lying in the boxes at the back seat.

Learned counsel for the petitioner(s) submitted that there is non-compliance of Section 50 of the NDPS Act inasmuch as the alleged offer was given to the accused whether

the accused want(s) to be searched before the Magistrate or not. There was no offer given viz-a-viz the consent of the accused whether they/he want(s) to be searched before the Gazetted Officer or not. Gazetted Officer was very much present with the police party. On seeing the Gazetted Officer/DSP with the police party, the accused allegedly reposed faith in DSP, who ultimately proceeded to supervise the recovery proceedings. Learned counsel further submitted that the recovery memo allegedly prepared by the police, does not contain signature of the accused. By referring to **Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741,** learned counsel submitted that non-obtaining the signature of the accused on the recovery memo, would be treated non-compliance of the mandatory requirement. Keeping in view the stringent provision of NDPS Act, Section 50 of the NDPS Act has to be meticulously complied with. Learned counsel also placed reliance upon **Makhan Singh Vs. State of Haryana, 2015(12) SCC 247** in this context.

Learned State counsel, however, opposed the bail on the premise that Gazetted Officer/DSP was present with the police party and on seeing the Gazetted Officer, the accused preferred to be searched by the Gazetted Officer and the alleged omission is not sufficient to discard the prosecution

story in toto.

Petitioner(s) is/are in custody since 05.08.2020.
Challan has already been presented. Two of the prosecution witnesses have been examined.

Keeping in view the facts and circumstances of the case and without meaning anything on merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, both the petitions are allowed.
Petitioners are ordered to be released on regular bail, subject to their furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

06.09.2021	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No