

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

(1) **CRM-M-10343-2020**
Date of Decision : 31.03.2021

Ajay Kumar @ NannuPetitioner

Versus

State of PunjabRespondent

(2) **CRM-M-10050-2020**
Date of Decision : 31.03.2021

Deepak Kumar @ DeepuPetitioner

Versus

State of PunjabRespondent

(3) **CRM-M-11634-2020**
Date of Decision : 31.03.2021

Vaneet Kumar @ HoneyPetitioner

Versus

State of PunjabRespondent

(4) **CRM-M-15785-2020**
Date of Decision : 31.03.2021

Harpreet SinghPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by : Mr. Vipul Jindal, Advocate
for the petitioners in CRM-M-10343-2020 and
CRM-M-11634-2020.

Mr. Amardeep Singh, Advocate
for the petitioner in CRM-M-10050-2020.

Mr. Rishu Mahajan, Advocate
for the petitioner in CRM-M-15785-2020

Mr. P.S. Walia, Asstt. AG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J.

1. The petitioner-Ajay Kumar @ Nannu has filed CRM-M-10343-2020; petitioner-Deepak Kumar @ Deepu has filed CRM-M-10050-2020; petitioner-Vaneet Kumar @ Honey has filed CRM-M-11634-2020 and petitioner-Harpreet Singh has filed CRM-M-15785-2020 under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of regular bail in case FIR No.118 dated 29.07.2018 registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') in Police Station C Division, Amritsar to which Sections 25 and 29 of the NDPS Act were added lateron.

2. The above-said FIR was registered on written information sent by ASI Baljinder Singh. As per prosecution version narrated in the written information, on 29.07.2018 police party headed by ASI Baljinder Singh was patrolling in private vehicle. When the police party was present at Chowk Bhagtan Wala, secret information was received that in Gali No.2 in Gilwali Gate, Ambedkar Colony, Ajay Kumar @ Nanu and Vaneet Kamar @ Honey, who are real brothers, conduct gambling sessions in their house and many boys were present and gambling in their house and if raid were conducted they could be nabbed while gambling. The police party accordingly conducted raid in their house and apprehended Ajay Kumar @ Nanu, Vaneet Kamar @ Honey, Deepak Kumar @ Deepu and Harpreet Singh @ Sanju, who

were packing heroin in small polythene packets and also taking out intoxicating tablets from strips and packing the same in small polythene packets. On search six small polythene packets each containing 5 grams heroin total weighing 30 grams (falling in the category of non-commercial quantity) and eight empty strips, 12 small polythene packets each containing 10 intoxicant tablets and polythene bag containing 880 intoxicating tablets totalling 1000 tablets (falling in the category of commercial quantity) were recovered from them. As per the FSL report diacetylmorphine was found in heroin and alprazolam was found in the tablets.

3. The petitioners being in custody have filed present petitions for grant of regular bail.

4. The petitions have been opposed by the respondent-State in terms of reply filed by way of affidavit of Sh. Mangal Singh, PPS, Assistant Commissioner of Police-South, Amritsar City in CRM-M-10343-2020.

5. I have heard learned Counsel for the petitioners and learned State Counsel and gone through the relevant record.

6. It may be observed at the very outset that in their petitions petitioners-Ajay Kumar @ Nannu, Vaneet Kumar @ Honey and Harpreet Singh had taken grounds, for grant of regular bail, of intoxicating tablets falling in the category of small quantity due to actual content of alprazolam being 0.38 gram per tablet and investigation being vitiated due to the complainant being the investigating officer but in view of judgments of Hon'ble Supreme

Court in *Hira Singh Vs Union of India : 2020(2) RCR (Criminal) 523*

and *Special Leave Petition (Crl.) Diary No.39528 of 2018 titled as Mukesh Singh Vs. State (Narcotic Branch of Delhi) decided on 31.08.2020* learned Counsel for the petitioners have not pressed and these grounds for grant of regular bail.

7. Mr. Vipul Jindal, learned Counsel for petitioners-Ajay Kumar @ Nannu and Vaneet Kumar @ Honey, Mr. Amardeep Singh, learned Counsel for petitioner-Deepak Kumar @ Deepu and Mr. Rishu Mahajan, learned Counsel for petitioner-Harpreet Singh have argued:-

(i) that the petitioners have been falsely implicated in the present case. The alleged recovery of contraband is alleged to have been made from all the four petitioners without specifically mentioning what was recovered from whom and the case involves debatable question as to whether the petitioners individually can be said to be in conscious possession of entire quantity of the contraband which entitles the petitioners to grant of bail. In support of his arguments Mr Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in *CRM-M-7950-2017 titled as 'Parminder Singh Vs. State of Punjab' decided on 16.03.2017*; *CRM-3529-2018 titled as 'Kuldeep Singh and another Vs. State of Punjab' decided on 06.04.2018*; *CRM-25737-2018 titled as 'Satpal Singh @ Ram and others Vs. State of Punjab' decided on 17.11.2018*; *CRM-29944-2017 titled as 'Avtar Singh Vs. State of Punjab' decided on 12.10.2017*; *CRM-26389-2017 titled as 'Avtar Singh Vs. State of Punjab' decided on 29.01.2018*; *CRM-35285-2017 titled as 'Gurlal Singh @ Gora and others Vs. State of Punjab' decided on 14.03.2018*; *CRM-M-21366-2018 titled as 'Kuldeep Singh Vs. State of Punjab' decided on*

03.10.2018; CRM-M-49680-2019 titled as 'Hardeep Singh Vs. State of Punjab' decided on 29.11.2019; CRM-M-21398-2016 titled as 'Arjun Singh Vs. State of Haryana' decided on 22.06.2016; CRM-M-7161-2016 titled as 'Dhanna Singh Vs. State of Punjab' decided on 05.04.2016; CRM-M-601-2018 titled as 'Gurpreet Singh @ Gopi Vs. State of Punjab' decided on 22.03.2018; CRM-M-47221-2017 titled as 'Gaurav Garg @ Bittu Vs. State of Punjab' decided on 13.03.2018; CRM-6743-2017 titled as 'Jangir Singh and another Vs. State of Haryana' decided on 16.03.2017; CRM-M-47998-2019 titled as 'Tarlok Singh Vs. State of Punjab' decided on 18.11.2019; CRM-M-23975-2019 titled as 'Gurcharan Singh @ Mannu Vs. State of Punjab' decided on 30.09.2019 and CRM-M-4349-2016 titled as 'Shabh Singh @ Saba @ Sahib Singh Vs. State of Punjab' decided on 14.03.2016.

(ii) that no independent witness was joined at the time of alleged raid. Personal search was conducted by Investigating Officer of the case without giving option of search before Magistrate or Gazetted officer and mandatory provisions of Section 50 of the NDPS Act were not complied with. The petitioners are entitled to grant of regular bail on this ground as well. In support of his arguments Mr Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in *State of Rajasthan Vs. Parmanand : 2014(2) RCR (Criminal) 40; Criminal Appeal No.459 of 2017 titled as 'S.K. Raju @ Abdul Haque @ Jagga Vs. State of West Bengal' decided on 05.09.2018; Criminal Appeal No.273 of 2007 titled as 'Arif Khan @ Agha Khan Vs. State of Uttrakhand' decided on 27.04.2018; Noor*

Aga Vs. State of Punjab : 2008(3) RCR (Criminal) 633; Nirmal Singh Pehalwan @ Nimma : 2011 (12) SCC 298; Suresh Vs. State of Madhya Pradesh : 2013(1) SCC (Criminal) 541; Vijaysinh Chandubha Jadeja Vs. State of Gujarat : AIR 2011 (SC) 77 and Sarija Banu Vs. State : 2004 (12) SCC 266.

(iii) that mentioning of number of FIR and additional offences in the recovery memo shows manipulation and fabrication of recovery memo subsequently in the police station which denudes recovery memo of any sanctity and strikes out integrity and shatters credibility of the prosecution version and entitles the petitioners to grant of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in judgments passed in *Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H); Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H)*; where mentioning of subsequent details in recovery memo was held to affect sanctity/credibility of recovery memo and *Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of*

Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 where bail was granted/ suspension of sentence was allowed on this ground.

(iv) that the quantity of the contraband allegedly recovered from possession of the petitioners is marginally higher than the commercial quantity of the contraband. In numerous cases of commercial quantity Hon'ble Supreme Court and this Court have granted bail to the petitioners on the ground of the same being marginally higher. In support of his arguments learned Counsel for the petitioners has placed reliance on the observations in orders passed in *CRA-668-2020 titled as 'Amit Singh Moni Vs. State of Himachal Pradesh' decided on 12.10.2020; CRA-245-2020 titled as 'Chitta Biswas @ Subhas Vs. The State of West Bengal' decided on 07.02.2020; CRM-6743-2017 in CRA-D-636-DB-2015 titled as 'Jangir Singh and another Vs. State of Haryana' decided on 16.03.2017; CRM-M-7811-2020 titled as 'Bhupinder Singh @ Motta Vs. State of Punjab' decided on 16.09.2020; CRM-M-12849-2020 titled as 'Baljit Kaur @ Baljito Vs. State of Punjab' decided on 04.06.2020; CRM-M-41242-2019 (O&M) titled as 'Jagjit Singh @ Jagga Gill Vs. State of Punjab' decided on 27.02.2020; CRM-M-47221-2017 titled as 'Gaurav Garg @ Bittu Vs. State of Punjab'*

decided on 13.03.2018; CRM-M-39534-2015 titled as 'Hardeep Singh @ Deepa Vs. State of Punjab' decided on 17.12.2015; CRM-M-19332-2020 titled as Dalbir Singh Vs. State of Punjab' decided on 06.08.2020; CRM-M-3326-2020 titled as 'Rakesh Kumar Vs. U.T. Chandigarh' decided on 17.08.2020; CRM-M-24349-2020 titled as 'Raju Kumar Vs. State of Punjab' decided on 31.08.2020; CRM-M-46363-2019 titled as 'Gurpreet Singh @ Bablu Vs. State of Punjab' decided on 03.12.2019; CRM-M-47998-2019 titled as 'Tarlok Singh Vs. State of Punjab' decided on 18.11.2019; CRM-M-23975-2019 titled as 'Gurcharan Singh @ Mannu Vs. State of Punjab' decided on 30.09.2019; CRM-M-11808-2018 (O&M) titled as 'Sukhbir Singh @ Sukh Vs. State of Punjab' decided on 21.01.2019; CRM-M-47446-2019 titled as 'Salinder Singh @ Shinda Vs. State of Punjab' decided on 28.10.2020; CRM-M-17235-2020 titled as 'Malkit Singh @ Ghulla Vs. State of Punjab' decided on 28.09.2020; CRM-M-19360-2020 titled as 'Bhola Singh Vs. State of Punjab' decided on 28.08.2020; CRM-M-23008-2020 titled as 'Dharminder Singh Vs. State of Punjab' decided on 03.09.2020; CRM-M-53641-2019 (O&M) titled as 'Nirmal Singh @ Bittu Vs. State of Punjab' decided on 13.08.2020; CRM-M-13461-2020 titled as 'Amru Vs. State of Haryana' decided on 12.06.2020; CRM-601-2019 in CRA-S-3701-SB-2018 titled as 'Raunki Singh Vs. State of Punjab' decided on 14.08.2019; Ankush Kumar @ Sonu Vs. State of Punjab : 2018(4) RCR (Criminal) 84 and SLP (Criminal) 42609 of 2018 titled as 'The State of Punjab Vs. Ankush Kumar @ Sonu' decided on 07.01.2019.

(v) that in cases involving recovery of commercial quantity of

the contraband, Hon'ble Supreme Court and this Court have while noticing restrictions imposed by Section 37 of the NDPS Act granted bail in view of period of custody of the accused or delay in concluding of prosecution evidence. In the present case also period of custody of the petitioners and delay in concluding of prosecution evidence entitle the petitioners to grant of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in *Sarija Banu (A) Janarthani @ Janani and another Vs. State through Inspector of Police : 2004(12) SCC 266; SLP(Crl.) No.6740-2019 titled as 'Union of India and another Vs. Hasibur Rahman' decided on 05.06.2020; SLP (Crl.) No.4590-2015 titled as 'Gurnam Singh @ Gagan Vs. State of Punjab' decided on 18.09.2015; SLP (Crl.) No.3416-2017 titled as 'Reena Vs. The State of Haryana' decided on 22.05.2017; CRM-M-1579-2016 titled as 'Maninder Singh @ Bittu Aulakh Vs. State of Punjab' decided on 24.02.2016; CRM-M-17590-2020 titled as 'Jai Parkash Sahni Vs. State of Punjab' decided on 14.12.2020; CRM-M-40540-2019 (O&M) titled as ' Babbu Vs. State of Punjab' decided on 26.02.2020; CRM-M-34400-2018 titled as 'Raj Kaur Vs. State of Punjab' decided on 16.08.2018; CRM-M-3320-2020 titled as 'Prince Kumar Vs. State of Punjab' decided on 01.09.2020; CRM-M-1502-2020 (O&M) titled as 'Kashmir Ram Vs. State of Punjab' decided on 25.08.2020; CRM-M-8426-2017 (O&M) titled as 'Chamkaur Singh Vs. State of Punjab' decided on 16.08.2017; CRM-M-15139-2020 (O&M) titled as 'Mandeep Singh Sharma Vs. State of Punjab' decided on 21.07.2020; CRM-M-13859-2020 (O&M) titled as 'Piyush Arora Vs. State of*

Punjab' decided on 16.06.2020; CRM-M-42896-2015 titled as 'Sanjay Gupta Vs. State of Punjab' decided on 06.05.2016; CRM-M-3001-2021 titled as 'Jaskaran Singh @ Gauri Vs. State of Punjab' decided on 09.02.2021; CRM-M-8035-2019 titled as 'Mandir Singh Vs. State of Punjab' decided on 28.02.2020; CRM-M-3244-2020 (O&M) titled as 'Jaspal Singh @ Jassa Vs. State of Punjab' decided on 15.12.2020; CRM-M-50093-2019 titled as 'Surinder Singh Vs. State of Punjab' decided on 21.07.2020; CRM-M-20080-2019 (O&M) titled as 'Thana Singh Vs. State of Punjab' decided on 17.09.2020; CRM-M-15976-2020 (O&M) titled as 'Ram Bilas @ Mantri @ Mukesh Vs. State of Punjab' decided on 24.07.2020 and CRM-M-29874-2020 'titled as Rajender Singh @ Rajinder Singh Vs. Union Territory, Chandgiarh granting bail to the accused in cases involving recovery of commercial quantity of the contraband on these grounds.

(vi) that petitioners-Deepak Kumar @ Deepu, Vaneet Kumar @ Honey and Harpreet Singh are not involved in any other case under the NDPS Act. Petitioner-Ajay Kumar @ Nannu has been falsely implicated during the period of his judicial custody in one case under the NDPS Act on the basis of alleged disclosure statement of co-accused which is not of any evidentiary value as there is no substantive evidence regarding his involvement in the crime. Rigors of Section 37 of the NDPS Act are satisfied in the case. The prosecution evidence is yet to be concluded and the trial is still likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by keeping the petitioners in custody.

Learned Counsel for the petitioners have accordingly

submitted that the petitioners may be ordered to be released on regular bail.

8. On the other hand, Mr. P.S. Walia, learned State Counsel has argued that the chance recovery of the contraband was made from the petitioners. All the petitioners were collectively engaged in nefarious trade of supply of narcotic drugs to the youth. There was no fabrication in the recovery memo rather it was clerical typing mistake. The petitioners were found in conscious possession of commercial quantity of the contraband. In view of nature of accusation and gravity of offences and rigors of Section 37(1)(b) of the NDPS Act, the petitioners do not deserve grant of regular bail. Therefore, the petitions may be dismissed.

9. The question of grant of regular bail to the petitioners has to be determined on the facts and circumstances of the present case by exercise of judicial discretion in accordance with relevant statutory provisions and settled principles of law.

10. Section 37 of the NDPS Act, which legislates the offences under the NDPS Act to be cognizable and non bailable and embodies the limitations on grant of bail for the specified offences, reads as under:-

“37. Offences to be cognizable and non-bailable. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

- (i) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
- (ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

11. In ***Union of India Vs. Rattan Malik @ Habul : (SC) : 2009(1) R.C.R.(Criminal) 938*** Hon'ble Supreme Court observed as under:-

*"13. It is plain from a bare reading of the non-obstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the Narcotic Drugs And Psychotropic Substances Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the Narcotic Drugs and Psychotropic Substances Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide **Union of India v. Shiv Shanker Kesari, 2007(4) RCR (Criminal) 186 : 2007(5) RAJ 134 : (2007)7 SCC 798**]. Thus, recording of satisfaction on both the aspects, noted above,*

is sine qua non for granting of bail under the Narcotic Drugs And Psychotropic Substances Act.”

12. Exercise of power to grant bail is not only subject to limitations contained under section 439 of Cr.P.C., 1973 but is also subject to limitations placed by Section 37 of the NDPS Act. No person can be enlarged on bail for offences enumerated under Section 37 of the NDPS Act unless twin conditions embodied therein are satisfied. The finding mandated under Section 37 of the NDPS Act in this regard is a sine qua non for granting bail to the accused under the NDPS Act. (See ***Union of India Vs. Niyazuddin Sk., (SC) : 2017(4) R.C.R.(Criminal) 644; Satpal Singh Vs. State of Punjab (SC) : 2018(5) R.C.R.(Criminal) 152 and State of Kerala Vs. Rajesh (SC) : 2020 (1) R.C.R.(Criminal) 818***).

13. The facts and circumstances of the present case and material on record have to be prima facie gone through for considering as to whether the conditions laid down in Section 37 of the NDPS Act are satisfied in the present case to entitle the petitioners to grant of regular bail.

14. As per the prosecution version raid was allegedly conducted by the police party headed by ASI Baljinder Singh on the basis of secret information regarding conducting of gambling sessions by the petitioners-Ajay Kumar @ Nannu and Vaneet Kumar @ Honey in their house. The secret information received was not reduced to writing and no information regarding the same was sent to the SHO or any superior officer before conducting the raid. Raid was conducted on the house of petitioners-Ajay Kumar @ Nannu and Vaneet Kumar @

Honey without joining two independent and respectable persons from the locality. 30 grams of heroin, falling in the category of non-commercial quantity, and 1000 intoxicating tablets, containing alprazolam weighing 0.38 grams per tablet falling in the category of commercial quantity due to total weight of 126 grams, are alleged to have been recovered from all the four petitioners without there being mention of individual recoveries. As per the prosecution version given in the FIR small polythene packets which were found to contain heroin weighing 5 grams each were in the hands of the petitioners. ASI Baljinder Singh in the presence of other police officials checked the small polythene packets in the hands of the petitioners. In view of these specific averments prima facie the case involves debatable question of non-compliance with the mandatory provisions of Section 50 of the NDPS Act as ASI Baljinder Singh himself conducted personal search of the petitioners without giving them the option of search before the Magistrate or Gazetted Officers.

15. Further, as per the prosecution version, the police party was carrying laptop and printer and recovery memo was prepared on the spot. In the written information sent by ASI Baljinder Singh only offences punishable under Sections 21 and 22 of the NDPS Act were mentioned and Sections 25 and 29 of the NDPS Act were added subsequently in the police station. The contention of the petitioners is that if the recovery memo had been prepared on the spot there would be no question of mentioning the number of FIR and addition of Sections 25 and 29 of the NDPS Act in the same. However, in the recovery memo number of FIR and Sections 25 and 29 of the NDPS Act were

printed. As compared thereto in memo of personal search and memo of arrest offences under Sections 25 and 29 of the NDPS Act were not mentioned and FIR number was also written by hand subsequently. Prima facie the fact that number of FIR and Sections 25 and 29 of the NDPS Act were printed in the recovery memo by itself shows that the recovery memo was subsequently prepared and printed in the police station and was not prepared and printed on the spot.

16. In ***Mustakeem @ Sirajudeen Vs. State of Rajasthan : AIR 2011 SC 2769*** it was held by Hon'ble Supreme Court that if the recovery memos were prepared at the Police Station itself then the same would lose its sanctity. In ***Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H)*** it was held by this Court that presence of FIR details on recovery memos etc. leads to two inferences: either the FIR was registered prior to the alleged recovery of contraband or the number of FIR was inserted in these documents after its registration in both the situations it seriously reflects upon the integrity of the prosecution version. This view was upheld and reiterated by the Division Bench of this Court in ***Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H)*** and mentioning of such details in recovery memo was held to affect sanctity/credibility of recovery memo. In ***Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as***

'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 bail was granted/suspension of sentence was allowed on this ground.

17. In view of these above referred judicial precedents and facts and circumstances of the case, there are reasonable grounds to believe that the petitioners are not guilty of such offences as alleged. As per custody certificate dated 19.01.2021 placed on record petitioners-Deepak Kumar @ Deepu, Vaneet Kumar @ Honey and Harpreet Singh are not involved in any other case under the NDPS Act. Even though as per custody certificate dated 22.02.2021 placed on record petitioner-Ajay Kumar @ Nannu is involved in another case FIR No.14 dated 20.01.2021 registered under Sections 21(c), 25 and 29 of the NDPS Act in Police Station STF Mohali but at the time when the said case was registered admittedly petitioner-Ajay Kumar @ Nannu was in judicial custody. Petitioner-Ajay Kumar @ Nannu is stated to have been involved in that case on the basis of alleged disclosure statement of co-

accused without any substantive evidence regarding his involvement so as to rule out false implication. In view of the antecedents of the petitioners there is reasonable ground for believing that the petitioners are not likely to commit any offence under the NDPS Act after their release on bail. Therefore, in the present case, prima facie both the conditions for grant of bail are satisfied.

18. In *Sujit Tiwari Vs. State of Gujarat (SC) : 2020 AIR (SC) 667* there was conspiracy to smuggle huge quantity of heroin into India but the appellant, a young man aged about 25 years and B.Tech Graduate behind bars for more than two years, was unaware of illegal activities of his brother and other crew members. Bail was granted to the appellant by Hon'ble Supreme Court with stringent conditions in view of reasonable possibility of his acquittal.

19. In view of facts and circumstances of the present case nature of evidence against the petitioners, the fact of the petitioners not being previous convicts, there being reasonable grounds for belief as to satisfaction of the conditions enumerated in Section 37 of the NDPS Act and also the fact that the trial is likely to take long time due to restrictions imposed to prevent the spread of Covid-19 and that presence of the petitioners during trial can be secured otherwise also than only by detention in custody, but without commenting on merits of the case, I am inclined to extend the concession of regular bail to the petitioners.

20. In view of the above, the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing of personal bond and bond of one surety in heavy amount to the

satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

21. However, the petitioners are granted regular bail subject to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.

22. Needless to observe that the observations in this order are made only for the purpose of disposal of the present petitions and nothing in this order shall be treated as expression of any opinion on merits of the case so as to bind or influence the trial Court in disposal of the case on merits.

31.03.2021

Kothiyal

**(ARUN KUMAR TYAGI)
JUDGE**

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