

254

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

CRM-M-15470-2021

Date of Decision: 29.10.2021

Raj Kumar @ Raju and another

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Bhupinder Ghai, Advocate,
for petitioner No.1.

Mr. H.S. Ghuman, Advocate,
for petitioner No.2.

Mr. B.S. Sewak, Additional Advocate General, Punjab.

SUDIP AHLUWALIA, J. (ORAL)

This is a petition filed on behalf of the petitioners for regular bail under Section 439 Cr.P.C. in case FIR No.306 dated 07.12.2020, under Sections 21, 22 of the NDPS Act, registered at Police Station City Rupnagar, District Rupnagar.

2. Yesterday Ld. State Counsel had sought a short adjournment to substantiate the contention that where recovery is effected from inside a vehicle/conveyance on a public road, then again the rigors of Section 42 of the NDPS Act do not apply. In this regard, original reliance of Ld. State Counsel was on the judgment passed by the Hon'ble Supreme Court in **Criminal Appeal No.1393 of 2010** titled as “***Mohan Lal Vs. State of Rajasthan***”, decided on 17.04.2015, so far as it related to the requirement of

carrying search in an enclosed place before sunset. But, there was little in

the said judgment to indicate the position concerning recovery from a private vehicle.

3. Today, Ld. Counsel for the petitioners has cited the latest judgment of the Hon'ble Apex Court passed in the case of **“Boota Singh and others Vs. State of Haryana”**, 2021(2) R.C.R. (Criminal) 892, in which it has been observed, *inter alia*:-

“.... xx xx

12. The evidence in the present case clearly shows that the vehicle was not a public conveyance but was a vehicle belonging to accused Gurdeep Singh. The Registration Certificate of the vehicle, which has been placed on record also does not indicate it to be a Public Transport Vehicle. The explanation to Section 43 shows that a private vehicle would not come within the expression “public place” as explained in Section 43 of the NDPS Act. On the strength of the decision of this Court in Jagraj Singh alias Hansa, the relevant provision would not be Section 43 of the NDPS Act but the case would come under Section 42 of the NDPS Act.

.... xx xx ”

4. In the present case also, the recovery was from a private vehicle, in which the petitioners/accused persons were travelling. In view of the aforesaid determination of the Hon'ble Apex Court in the citation relied upon by the petitioners' side, it is clear that in the present case also, the rigors of Section 42 of the NDPS Act alone would be applicable and not of Section 43 of the NDPS Act.

5. The petitioners, who were arrested on 07.12.2020, have remained in detention for ten months and fifteen days by now, as per custody certificate of petitioner No.2 issued yesterday. There is no record of

their involvement in any other case under the NDPS Act.

6. In view of the above, considering the detention undergone by the petitioners and the apparent non-compliance of the statutory provisions of Section 42 of the NDPS Act, as also without commenting any further on merits of the present case as a whole, their prayer for regular bail is allowed and they are ordered to be released on bail, subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

7. Disposed off.

29.10.2021

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No