

**CRM-M-18743-2021 and
CRM-M-18799-2021**

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

**CRM-M-18743-2021
Date of decision: 20.07.2021**

**(I)
Sandeep Kumar**

.....Petitioner (s)

V/s.

State of Punjab

.....Respondent(s)

CRM-M-18799-2021

**(II)
Hardeep Kumar**

.....Petitioner (s)

V/s.

State of Punjab

.....Respondent(s)

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

**Present: Mr. R.P. Dhir, Advocate, for the petitioner
in CRM-M-18743-2021.**

**Mr. Vinod Ghai, Senior Advocate assisted by
Ms. Kanika Ahuja, Advocate for the petitioner
in CRM-M-18799-2021.**

Mr. Randhir Singh Thind, Deputy Advocate General, Punjab.

JASGURPREET SINGH PURI, J.

Both these two petitions are taken up together since the same are arising out of the same FIR, filed under Section 439 Cr.P.C for grant of regular bail to the petitioners in case bearing FIR No.143 dated 23.10.2020, under Sections 21 (c) and 29 of the NDPS, Act, registered at Police Station

Chabbewal, District Hoshiarpur.

All the learned counsel for the parties have stated that both petitions can be taken up together for final disposal.

The facts in the present case are taken up from CRM-M-18799-2021. As per the FIR when the police party was patrolling and checking for suspicious persons, an unnumbered white colored Aactiva which was being driven by a lady came from the side of Mahilpur seeing which the police signalled her to stop but she, instead of stopping the Aactiva, tried to drive away but with the help of other police officials she was stopped and was asked her name and address upon which she told her name to be Jasvir Kaur alias Faujan wife of late Kishan Singh, resident of Mahilpur and was confronted by a police official who told his name and identity and gave her an option for being searched through any Magistrate or a Gazetted Officer of the Punjab Government and, therefore, the provisions of Section 50 NDPS Act were complied with. A recovery of 400 grams of heroin was effected from the aforesaid Jasvir Kaur and the Indian currency worth Rs.11,40,000/- was also recovered.

Mr. Vinod Ghai, learned Senior Advocate appearing with Ms. Kanika Ahuja, Advocate in CRM-M-18799-2021 as well as Mr. R.P. Dhir, Advocate appearing in CRM-M-18743-2021 have submitted that both the petitioners have been falsely implicated in the present case. Giving the background of the case they have submitted that the main accused in the present case is Jasvir Kaur against whom a number of cases are pending but so far as the present petitioners are concerned, both the petitioners are sons-

in-law of Jasvir Kaur and they were neither present at the spot nor was anything recovered from them nor were they involved in the present case. The FIR was lodged on 23.10.2020 and on the same day vide Annexure P-2 the said Jasvir Kaur suffered a disclosure statement and named one Gurnam Singh by stating that he used to supply drugs to her which she further sold to the customers and collected money. In this disclosure statement the main accused Jasvir Kaur did not make any mention about the petitioners. However, after two days i.e. on 25.10.2020 vide Annexure P-3 she made a second disclosure statement giving the names of both the petitioners, who are her sons-in-law, stating that they used to bring heroin from outside and supply it to her. The learned counsels for the petitioners have submitted that it is a case where in fact the police officers had personal grudges against the aforesaid Jasvir Kaur because earlier also the police wanted to involve the petitioners who are the sons-in-law of the Jasvir Kaur and vide Annexure P-6 Jasvir Kaur had filed a petition before this Court highlighting the high handedness of the police and this Court had issued directions vide Annexure P-6 to the I.G. Police to look into the representation and if need be to take appropriate steps in accordance with law. This order was passed on 03.04.2018 and thereafter, now it was only because of the aforesaid reason that the police has falsely got the disclosure statement from Jasvir Kaur and that also in her second disclosure statement where the names have been taken. It was further submitted that it is a settled law that disclosure statement is a weak piece of evidence and in the absence of any corroborative evidence to link the accused with the main offence purely on

the basis of disclosure statement is unsafe. Learned counsels further relied upon the latest judgment of Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu [2021 (1) RCR (Criminal) 1]* to contend that disclosure statement is inadmissible in evidence especially under the NDPS Act. They further submitted that there is no material available with the prosecution to link the petitioners with the alleged offence. They submitted now the investigation of the case is already complete and challan has already been presented and Section 29, NDPS Act was added later on in view of the disclosure statement made by the co-accused. The learned counsels further submitted that so far as the petitioner namely Sandeep Kumar is concerned, he is in custody since 01.04.2021 and so far as Hardeep Kumar is concerned, he is in custody since 31.03.2021 and the investigation of the case is already complete and challan stands presented. They have further submitted that so far as Sandeep Kumar is concerned, he is not involved in any other case and so far as Hardeep Kumar is concerned, there is one case of NDPS Act against him of the year 2018 and FIR No.21 dated 08.03.2021 and he is already on bail. The learned Senior Counsel submitted that the aforesaid FIR is the same FIR with respect to which vide Annexure P-6 Jasvir Kaur had filed a petition before this Court in which directions were issued to the Inspector General of Police and it was only due to this reason that the names of the petitioners have been nominated afterwards at the instance of the police officials due to enmity. The learned Senior Counsel further submitted that although the alleged recovery was of a commercial quantity from the co-accused but the names of the petitioners have been nominated only on the

basis of a second disclosure statement by the co-accused and that also because of the factual background which has been stated above. He submitted that it is a case where there are reasonable grounds for believing that the petitioners are not guilty because the only evidence at this stage is the disclosure statement of the co-accused which is otherwise not admissible in evidence and there is no other evidence to link the petitioners with the alleged offence and, therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case and departure can be made thereof.

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that the present case will be hit by the bar contained under Section 37 of the NDPS Act because the recovery in the present case was of 400 grams of heroin which is of a commercial quantity. He has not disputed the custody period of the petitioners. He has also not disputed that the investigation of the case is already complete and challan has already been presented in the competent court.

I have heard the learned counsel for the parties.

The custody periods of both the petitioners are not in dispute and it is also not in dispute that the investigation of the case is already complete and the challan stands presented before the competent Court. Since an objection with regard to Section 37 of the NDPS Act has been raised by the learned State counsel it would be necessary to deal with the applicability on the facts and circumstances in the present case. The names of both the petitioners who are sons-in-law of Jasvir Kaur from whom the recovery was

made were nominated only on the basis of a disclosure statement and that too a second disclosure statement of the aforesaid Jasvir Kaur. Learned State counsel has not been able to substantiate as to whether there is any other sufficient material available with the prosecution to link the petitioners with the offence apart from the disclosure statement. So far as the disclosure statements are concerned, the same would at this stage not be admissible in evidence in view of the law laid down by Hon'ble Supreme Court in ***Tofan Singh's case (Supra)***. Furthermore, the background as to why the petitioners have been nominated in the present case as stated by the learned counsel for the petitioners is also a matter of relevant consideration. So far as the petitioner Sandeep Kumar who is one of the petitioner is concerned, there is no other case against him and so far as the other petitioner Hardeep Singh is concerned, there is one case under the NDPS Act against him regarding which also the learned counsel for the petitioner has explained the background as to why he was implicated. Therefore, at this stage since there is nothing on the record to show that apart from the disclosure statement there is any other material available for linking the petitioners with the offence, therefore, it is more than a prima facie case to believe at this stage that the petitioners are not guilty of such an offence. Furthermore, it is not the case of the State that in case the petitioners are released on bail then they may influence any witness or may tamper with any evidence or may flee from justice. Therefore, the second ingredient as contained under Section 37(b)(ii) would be satisfied. Therefore, this Court is satisfied that a departure can be made from the bar contained under Section 37 of the NDPS Act.

Therefore, without commenting on the merit of the case and considering the totality of circumstances, both the petitions are allowed. The petitioner in both the petitions shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

(JASGURPREET SINGH PURI)
JUDGE

20.07.2021
rakesh

whether speaking:	Yes/no
whether reportable:	Yes/no