

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

218-2

CRM-M No.24133 of 2021
Date of decision:26.10.2021

Jangir Singh @ Jangira

... Petitioner

Vs.

State of Haryana

... Respondent

218-3

CRM-M No.20886 of 2021
Date of decision:26.10.2021

Kapil Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Jagjit Singh Gill, Advocate for the petitioner
in CRM-M-24133-2021.

Mr. D.S. Virk, Advocate for the petitioner
in CRM-M-20886-2021.

Mr. Gurmeet Singh, AAG, Haryana.

SUVIR SEHGAL J. (ORAL)

Heard through video conferencing.

This order shall dispose of CRM-M-24133-2021 titled as **Jangir Singh @ Jangira versus State of Haryana** and CRM-M-20886-2019 titled as **Kapil Kumar versus State of Haryana**, as both the petitioners are accused in the same case i.e. FIR No.280 dated 05.09.2020 registered under Section 21 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short “the Act”) at Police Station Civil Lines Sirsa, District Sirsa, and have approached this Court by way of separate petitions seeking grant of regular bail.

As per the case of the prosecution, FIR, has been registered on the basis of secret information that Jitender Kumar @ Jeetu, was travelling in a car with contraband. He was apprehended and recovery of 350 grams of *heroin* was effected from him. Accused Jangir Singh @ Jangira has been arrested on 07.03.2021 and accused-Kapil Kumar has been arrested on 09.03.2021.

Counsel for the petitioners have urged that the petitioners have been nominated as accused on the basis of the disclosure statement of co-accused, Jitender Kumar @ Jeetu, and no recovery has been effected from either of them. It has been contended that even the disclosure statement of co-accused is contradictory and in any case such a statement is a weak piece of evidence and cannot be relied upon to convict an accused. Still further, it has been argued that accused-Kapil Kumar, in his alleged confessional statement has stated that he had sold 250 grams of *heroin* to co-accused, Jitender Kumar @ Jeetu, on 23.08.2020, but on the said date, he was in custody in FIR No.176 dated 09.11.2019 registered under Section 21 of the Act at Police Station Ding, District Sirsa, wherein he was granted concession of regular bail by this Court vide order dated 14.10.2020 passed in CRM-M-31538-2020. Submission has been made that the investigation qua the petitioners is complete as challan has been presented and the petitioners are entitled to be released on bail.

Per contra, learned State counsel upon instructions from ASI Jagmeet Singh has opposed the petition on the ground that both the petitioners are involved in a number of criminal cases and their antecedents do not warrant the release on bail. However, upon

instructions, he could not dispute this fact that both the petitioners have been named as accused on the basis of disclosure statement and no recovery has been effected from them. Upon further instructions, he submits that challan qua the petitioners has been presented on 22.04.2021, charge has been framed on 11.08.2021 and 01 out of 18 prosecution witnesses has appeared in the witness box. Still further, he has urged that rigor of Section 37 of the Act is attracted against the petitioners as recovery effected from co-accused falls in commercial category.

I have considered the respective submissions of the parties. .

A Division Bench of this Court in **Dharamveer Singh and another vs. State of Punjab** 2015 SCC Online P&H 5526 has held that in cases where no recovery has been effected from the accused, the bar as laid down in Section 37 of the Act is not applicable. The petitioners have been arraigned as accused on the basis of confessional statement of co-accused, the legality and veracity of which is yet to be tested.

Considering the fact that both the petitioners are behind bars for the last more than 07 months, no recovery has been effected from them and trial is likely to take time to conclude, this Court is prima facie of the view that they deserve to be released on bail during the pendency of the trial.

Without commenting upon the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

While being released on bail, the petitioners shall furnish an affidavit to the effect that henceforth they will not indulge in the sale, purchase or trade etc. of the prohibited substance. In case, they violate the undertaking, it shall be open for the State to seek cancellation of the bail.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

26.10.2021

(SUVIR SEHGAL)

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JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No