

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

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CRM-M-26208-2021

Date of Decision : July 26, 2021

ANITA KUMARI

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CRM-M-26333-2021

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SONU @ SONIA

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Piyush Aggarwal, Advocate
for the petitioner in CRM-M-26208-2021.

Mr. Vikas P. Singh, Advocate
for the petitioner in CRM-M-26333-2021.

Mr. Naveen Singh Panwar, DAG, Haryana.

Through Video Conferencing

JASGURPREET SINGH PURI. J. (Oral)

These two petitions are taken up together since they arise from the same FIR and, therefore, can be disposed of together and there is no objection from either of the learned counsels for the parties.

As per the FIR, an information was received by the police that a vehicle HONDA City Car of Silver colour bearing No. HR26AL-5134 was coming from Delhi in which one driver, namely, Dharminder @ Devinder son of Ram Phal alongwith two ladies were carrying Chitta (Heroin) and going towards Hisar City and in case a Naka is laid down then they can be caught. Thereafter the aforesaid car was caught by the police party and on the driving seat there was a young boy and on the back seat, there were two females carrying two minor kids aged 2.6 years and 4 years when they were asked about their names, the driver disclosed his name to be Dharminder @ Devinder son of Ram Phal and the two ladies sitting behind disclosed their names as Sonu @ Sonia and Anita (petitioners). Thereafter the process under Section 50 of the NDPS Act was carried out and all of them were searched in the presence of a Gazetted Officer. There was a recovery of 535 grams of Heroin from the right pocket of the jeans of Dharminder but no recovery was made from the petitioners who were sitting on the back seat.

Both the learned counsels for the petitioners have argued that in the present case, the petitioners were only sitting in the car after taking a lift from aforesaid Dharminder and they were not involved in any kind of such activity with regard to the recovery which was also otherwise made from the driver of the car. It was further submitted that the petitioners are in custody since 28.5.2021 and that they are not involved in any other case and they have been implicated only on the ground that they had simply taken a lift from co-accused Dharminder.

On 20.7.2021, learned State counsel was granted some time

to seek instructions with regard to the antecedents of the husbands of the petitioners, who are in jail.

The learned State counsel has stated that he has sought instructions to state that the husbands of the petitioners are involved in five other cases but none of those cases pertained to NDPS Act. Mr. Panwar, learned DAG, Haryana has opposed the grant of bail to the petitioners on the ground that there was a recovery of commercial quantity of the Heroin from the co-accused and, therefore, the present petitioners were hit by the bar contained under Section 37 of the NDPS Act. He further submitted that during investigation of the case, the other co-accused, namely, Dharminder has also disclosed the role of the petitioners. Learned counsels for the petitioners have also relied upon the judgment of the Hon'ble Supreme Court in Sujit Tiwari Vs. State of Gujarat, 2020 (I) SC 477 to contend that since the petitioners took lift from co-accused Dharminder and no recovery was made from them, the bar under Section 37 of the NDPS Act will not apply against them.

I have heard learned counsels for the parties.

It is not in dispute that both the petitioners who are ladies having minor children were sitting in the back seat of the car and no recovery was made from them but there was a recovery of Heroin from the driver of the car. It is also not disputed that both the petitioners are in custody since 28.5.2021 and there is no other case against the petitioners. However, the husbands of the petitioners are involved in other cases but those cases do not pertain to the NDPS Act. Section 37 of the NDPS Act creates a bar for grant of bail in the case of recovered quantity is of

commercial nature. In the present case the recovery was of commercial quantity but there is nothing on the record to show at this stage as to how the petitioners were involved in the present case. The connectivity of the petitioners with the other co-accused, namely, Dharminder is only based upon a disclosure statement made by the aforesaid Dharminder from whom the recovery was made. The disclosure statement of the co-accused will not be admissible in evidence in view of the law laid down by the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1*. The involvement of the husbands of the petitioners in other cases, which were not involving the NDPS Act would also not become a ground for denial bail to the petitioners. Since at this stage no sufficient material is available to connect the petitioners with the offence, this would be more than a prima facie case for believing the present petitioners not guilty of the present offence. So far as the other condition under Section 37(b)(2) of the Narcotic Drugs and Psychotropic Substances Act is concerned, it is not a 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 and, therefore, there is no likelihood of the petitioners to commit any other offence while on bail.

Therefore, without going into the merits of the case, this Court deems it fit to grant bail to the petitioners.

Consequently, the present petitions are allowed. The petitioners are ordered to be released on bail on furnishing of bail bonds

and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.

July 26, 2021
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No