

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214/2

CRM-M-6571 of 2022
Date of Decision: 31.10.2022

Upender

....Petitioner

Versus

State of Haryana

.....Respondent

2)

CRM-M- 10819 of 2022

Narender

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Kotla, Advocate,
for the petitioners.

Mr. Naveen Singh Panwar, DAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

Both the cases are taken up together for final disposal with the consent of learned counsel for the parties since both the petitions arise out from the same FIR and the prayer made in both these cases is for the grant of regular bail.

Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.450

dated 17.07.2021, under Section 20 of the NDPS Act, registered at Police Station Samalkha, Panipat.

The present FIR was lodged on the basis of a secret information that Narender (petitioner in CRM-M- 10819 of 2022) and Upender (petitioner in CRM-M-6571 of 2022) will be coming from the side of Delhi in a white Santro car bearing registration No. UK-07-BB-8042 with a large quantity of intoxicant substances and will go to Panipat. If barricading is set up near village Bhodwal Majri on the G.T. Road and then Narender and Upender i.e. both the petitioners can be apprehended alongwith intoxicant substances in the car. Thereafter, ASI alongwith his colleagues in a Government vehicle went towards the village Bhodwal Majri for barricading and after sometime one car came from the side of Delhi which was signaled with torch which stopped and then the police party apprehended young persons sitting on the driver seat and conductor seat and on asking their names the boy sitting on the driver seat told his name as Narender son of Dharm Singh and the boy sitting on the conductor side told his name as Upender son of Hoshiyar Singh and the ASI also saw the number plate of the car i.e. UK-07-BB-8042 which was a white Santro car. Thereafter the separate notices under Section 50 of the NDPS Act were served upon both the petitioners and due compliance was made. After searching the car, it was found on the rear seat of the car there were two white colour plastic bags tied with rope and when opened and checked there was black greenish leaf like substance and was smelling like *Ganja*. The petitioners also confirmed the same to be *Ganja*. Thereafter the bags were weighed through computerised weighing machine separately and found 26 kgs. 840 grams in Sr. No.1 and in second bag at Sr. No.2 weighed 28 kgs. 750 grams

totaling 55 kgs. 590 grams.

Learned counsel for the petitioners in both the cases submitted that the petitioners have been falsely implicated and they are in custody from 17.07.2021. He further submitted that the charges in the present case were framed on 16.05.2022 but no prosecution witness has been examined till date. He further submitted that so far as the petitioner Upender is concerned, he had only taken a lift and was only a passenger and there was no recovery from his conscious possession and therefore he may be considered for the grant of regular bail.

On the other hand, Mr. Naveen Singh Panwar, learned DAG, Haryana submitted on instructions from investigating officer ASI Anil Kumar that although it is correct that the petitioners are in custody from 17.07.2021 but there had been a confiscation of 55 kgs. 590 grams of *Ganja* from the car of the petitioners in which they were travelling and there was a specific secret information by name pertaining to both the petitioners which is apparent from the FIR itself that they were coming from Delhi side and were going towards Panipat and if they are caught then large quantity of contraband can be seized from them. When the police party made barricading and the same car number was stopped and then both the petitioners were sitting in the car. He submitted that although the petitioner Upender was sitting on the conductor side of the car but he was also specifically named by the secret informer alongwith other co-accused namely Narender. He submitted that the confiscated quantity was a large quantity and falls in the category of commercial quantity and rather it is 2.5 times more than the prescribed commercial quantity under the NDPS Act. He submitted that the bar contained under Section 37 of the NDPS Act is attracted in the present case and there is no ground available

with the petitioners for making a departure from the same. He also submitted that another co-accused namely Lokender has also filed bail petition before this Court on the ground that he was nominated on the basis of disclosure statement made by the co-accused namely Narender who is one of the petitioners (CRM-M-10819 of 2022) but the bail petition of the aforesaid co-accused namely Lokender has been dismissed by this Court on 05.10.2022 in CRM-M-33035 of 2021 and he has therefore prayed for dismissal of both the petitions.

I have heard the learned counsel for the parties.

Both the petitioners were named in the FIR on the basis of a secret information. The alleged confiscation was of 55 kgs. 590 grams of *Ganja* which falls in the category of commercial quantity under the NDPS Act. Learned counsel for the petitioners has not been able to make any ground for making a departure from the bar contained in Section 37 of the NDPS Act. The arguments raised by learned counsel for the petitioners with regard to the petitioner namely Upender that he was only a passenger and there was no recovery from his conscious possession, would not be of any avail of the petitioner in view of the fact that he has been specifically named in the FIR on the basis of a secret information. The bail petition of the other co-accused namely Lokender who was nominated on the basis of a disclosure statement has also been dismissed by this Court.

This Court does not wish to make any observation with regard to the merits of the case but for the purpose of considering the bail petition of the petitioners, the bar contained in Section 37 of the Act has to be considered. Learned counsel for the petitioners has not been able to make out any case for making a departure from the bar contained under Section 37 of the Act.

Consequently, finding no merit in both the petitions, the same are hereby dismissed.

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

(JASGURPREET SINGH PURI)
JUDGE

October 31, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No