

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

217-2 cases

CRM-M No.10825 of 2021
Date of decision:21.02.2022

Bijender

... Petitioner

Vs.

State of Haryana

... Respondent
CRM-M No.23290 of 2021

Narender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Jitender Dhanda, Advocate for the petitioner
in CRM-M-10825-2021.

Mr. Rajinder Goyal, Advocate for the petitioner
in CRM-M-23290-2021.

Ms. Deepshikha Chauhan, AAG, Haryana.

SUVIR SEHGAL J.

Heard through video conferencing.

This order shall dispose of CRM-M-23290-2021 titled as **Narender versus State of Haryana** and CRM-M-10825-2021 titled as **Bijender versus State of Haryana**, as both the petitioners are accused in the same case i.e. FIR No.29 dated 11.02.2020 registered under Sections 20/25/27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short “the NDPS Act”) at Police Station City Safidon, District Jind, and have approached this Court by way of separate petitions seeking grant of regular bail. For the sake of convenience, facts are being taken from CRM-M-10825-2021.

As per the case of the prosecution, on the basis of secret information, a car was intercepted and 9.20 kg. of *charas* in 03 polythene bags was recovered from its boot. Bijender (petitioner in CRM-M-10825-2021), who was on the driver seat, Dilawar, who was sitting besides him and Narender (petitioner in CRM-M-23290-2021), who was on the rear seat, were apprehended.

Counsel for the petitioners submits that the petitioners are innocent and have been falsely framed. He contends that no recovery has been effected from them and the mandatory provisions of Section 50 of the NDPS Act have not been complied with, while conducting the search. It is his argument that the petitioners, who have a clean antecedents and are in custody since the last more than 02 years, deserve to be released on bail as the *challan* stands presented and no prosecution witness has been examined. Reliance has been placed by the counsel upon orders passed by this Court, whereby co-accused have been released on bail.

Per contra, learned State counsel upon instructions from SI Amrit Singh, and by placing reliance upon status report filed by way of an affidavit of Deputy Superintendent of Police, Safidon, which is taken on record, has opposed the petition. He has argued that as the recovery has not been effected from the person of the petitioners, there is no need to comply with Section 50 of the NDPS Act. She has invited the attention of the Court to Section 37 of the NDPS Act and submits that the petition deserves to be rejected.

I have considered the arguments addressed by counsel for the parties.

Exceptionally, huge quantity of contraband has been recovered from the vehicle, in which the petitioners were travelling. Though, none of the petitioners are the owner of the vehicle, but it has been submitted in the status report that the vehicle belongs to the brother of Pala Ram on whose behalf, the petitioners were transporting the contraband.

The bar laid down in Section 37 of the NDPS Act is already attracted. Hon'ble Supreme Court in *State of Kerala vs. Rajesh (2020) 12 SCC 122* has observed that Section 37 of the NDPS Act starts with a non obstante clause and unless the twin conditions laid down therein are satisfied, the accused cannot be released on bail. Counsel for the petitioner could not point out any reasonable ground to show that the accused are not involved in the transportation of the contraband.

Insofar as the bail orders of co-accused are concerned, it deserves to be noticed that Dilawar has been released on default bail. Pala Ram has got the benefit of the fact that no recovery has been effected from him and that his name figures in the confessional statement of co-accused. Therefore, the orders passed in the cases of co-accused will not help the petitioner.

Finding no merit in both the petitions, they are ordered to be dismissed.

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

21.02.2022

(SUVIR SEHGAL)
JUDGE

sheetal

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