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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17386-2022

Date of Decision: 29.11.2022

Beant Singh alias Kala

.....Petitioner

Versus

State of Punjab

..... Respondent

(II)

CRM-M-35904-2022

Chamkaur Singh @ CK

....petitioner

Versus

State of Punjab

.....respondent

(III)

CRM-M-44177-2022

Khushwinder Singh alias Kalu

....petitioner

Versus

State of Punjab

.....respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.K.S. Phoolka, Advocate
for the petitioner in CRM-M-17386-2022.

Mr. P.S. Sekhon, Advocate
for the petitioner in CRM-M-35904-2022.

Mr. Kanisth Ganeriwala, Advocate
for the petitioner in CRM-M-44177-2022.

Mr. Kunal Vinayak, AAG, Punjab..

JASGURPREET SINGH PURI, J. (ORAL)

This common order shall dispose of all the above mentioned 3
criminal miscellaneous petitions as they arise out of the same FIR.

All the above mentioned three petitions have been filed under Section 439 of Code of Criminal Procedure for seeking grant of regular bail in case FIR No.001 under Sections 22/29/125 of NDPS Act, 1985 registered at Police Station Bhikhi, District Mansa.

It has been submitted by learned counsel for the petitioners that it is a case where all the petitioners are in custody since 02.01.2022 and police has already completed the investigation in the present case and thereafter challan has been presented and charges have been framed.

Learned counsel for the petitioners have also stated that all the 3 petitioners are not habitual offenders and they are not involved in any other case. The learned counsels have further submitted that as per the allegations, the petitioners were in a car from where there was alleged recovery of 1500 tablets of Tramadol and 27 vials of Lykarex and it is a case where while giving an offer under Section 50 of NDPS Act, a joint offer was given to all the 4 persons who were allegedly found in the car. He submitted that so far as the 4th accused, namely, Kuldeep Singh is concerned, he has also filed a petition i.e. CRM-M-37583-2022 before this Court for grant of bail and vide order dated 16.09.2022 (Annexure-P-2) in CRM-M-44177-2022, he has been granted bail on the ground that the joint offer to all the 4 accused was bad in law and in violation of Section 50 of NDPS Act while relying on the judgment of Hon'ble Supreme Court in **State of Rajasthan vs. Parmanand and another 2014 (2) SCC (Crl.) 563.** He submitted that since there is a violation of Section 50 of the NDPS Act in view of the aforesaid judgment the bar contained in Section 37 of the NDPS Act will not apply in the present case. They have further

submitted that all the 3 petitioners are in parity with the aforesaid accused Kuldeep Singh.

Mr. Kunal Vinayak, AAG, Punjab, on the other hand stated that it is correct that all the 3 persons are in custody from 02.01.2022 and all the 3 petitioners are at parity with the aforesaid co-accused namely Kuldeep Singh who has been granted bail by this Court due to violation of Section 50 of the NDPS Act in view of the Hon'ble Supreme Court judgment in *State of Rajasthan (Supra) case*. He has also stated that it is also correct that all the 3 petitioners are not habitual offenders and are not involved in any other case.

I have heard the learned counsels for the parties.

All the 3 petitioners have faced incarceration for more than 10 months and they are stated to be not habitual offenders and are not involved in any other case. The similar situated co-accused namely Kuldeep Singh has been granted bail by this Court vide order dated 16.09.2022 on the ground that there had been violation of Section 50 of NDPS Act in view of aforesaid judgment of Hon'ble Supreme Court in *Parmanand's case (supra)*. It is not in dispute that so far as the issue of violation of Section 50 is concerned, the petitioners are at parity with the aforesaid co-accused namely Kuldeep Singh.

In view of the aforesaid position, this Court is of the view that due to violation of Section 50 of NDPS Act the provisions of Section 37 of the NDPS Act will not apply in the present case since this Court has prima facie reasons to believe that at least at this stage the petitioners are not guilty of offence. Apart from the above, the petitioners are stated to be not involved in any other case nor is the argument raised by the State that in case the petitioners are released on bail then they may repeat the offence or may

abscond from justice. Therefore, the second ingredient for making a departure from the bar contained under Section 37 of NDPS Act remain satisfied and therefore the bar contained under Section 37 of NDPS Act will not apply in the present case.

In view of the aforesaid facts and circumstances, this Court is of the view that all the 3 petitioners deserve the concession of bail.

Consequently, all three petitions are allowed. The petitioners 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 herein above shall not be treated as an expression of opinion on merits of the case & is only meant for the purpose of decision of present petition.

29.11.2022
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(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No