

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

Date of decision : 17.03.2022

1. CRM-M-17503-2020(O&M)

Gurpreet Singh @ Mani

... Petitioner

Versus

State of Punjab

... Respondent

2. CRM-M-19973-2020(O&M)

Sajan Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vipul Jindal, Advocate
for the petitioner in both the petitions.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This order will dispose of two Criminal Miscellaneous Petitions. The first petition is CRM-M-17503-2020 filed by Gurpreet Singh @ Mani and the second petition is CRM-M-19973-2020 filed by Sajan Singh praying for regular bail in FIR no.41 dated 06.02.2020 registered under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “NDPS Act”) and Sections 307, 148, 149 IPC and

Learned counsel for the petitioners has submitted that the pleas raised and the issue of law involved in both the petitions is the same and has prayed that CRM-M-17503-2020 be taken up as the lead case. Learned State counsel has no objection to the same. Accordingly, CRM-M-17503-2020 is taken as lead case and the facts are being taken from the same.

Learned counsel for the petitioners at the outset has referred to the order dated 17.12.2020 passed by a coordinate Bench of this Cour, the relevant portion of the said order is reproduced hereinbelow:-

“Case taken up through video conferencing.

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.41 dated 06.02.2020 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 307, 148 and 149 IPC and Sections 25 and 27 of the Arms Act, 1959, at Police Station Sadar Amritsar.

Briefly stated, the case of the prosecution is that the police party finding the petitioner and his five co-accused roaming around suspiciously searched and recovered 500 grams of heroin from the petitioner, later, on on his disclosure statement 36 grams of heroin from his car and at the time of search co-accused Rajinder fired upon the police party as a result of which two of the co-accused managed to flee.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case; there is no other criminal case in which the petitioner is involved; there is no recovery from the person of the petitioner; report under Section 173 Cr.P.C. has been filed and therefore the petitioner is in no position to influence the investigation; alleged firing on the police is by co-accused Rajinder and not the petitioner; for the

last several months no effective proceedings have taken place in the petitioner's trial for which he cannot be blamed; 12 prosecution witnesses are to be examined in the petitioner's trial and therefore the same is likely to take a long time to conclude and in this case the memo of consent is a cyclostyled copy which contains the number of the FIR which is impossible as at the time of consent admittedly no FIR had been lodged.

Learned State counsel opposes the grant of regular bail to the petitioner on the ground that the petitioner and his co-accused have been found in illegal possession of 536 grams of heroin and on being caught his co-accused fired upon the police party.

Whether the petitioner has been falsely implicated in the case and the effect of printing of FIR number on the consent memo would be debated during the course of trial.

On one hand the petitioner is not involved in any other criminal case; alleged firing is by co-accused Rajinder; he has suffered incarceration for over ten months; report under Section 173 Cr.P.C. has been filed and therefore he is in no position to influence the investigation; for the last several months no effective proceedings have taken place in the petitioner's trial; in the petitioner's trial where 12 prosecution witnesses are to be examined the same is not likely to conclude in the near future especially in the present circumstances when the world is facing the Covid-19 pandemic for which the petitioner cannot be blamed and on the other hand the petitioner and his co-accused are accused of being in illegal possession of 536 grams of heroin and firing on the police party.

After considering the totality of the above noticed facts this Court is of the opinion that while adjourning the present petition to 19.03.2021 subject to the

satisfaction of the CJM/Duty Magistrate, Amritsar, the petitioner be released on interim bail. On the adjourned date, subject to the petitioner's surrender on 16.03.2021, further orders in the present petition would be passed after considering the merits of the case; his conduct during the time he was on interim bail; progress in his trial and the situation with regard to the Covid-19 pandemic.

It is clarified that nothing observed herein-above shall be construed to be an expression of opinion by this Court on the merits of the case.”

Reliance has also been placed upon the order dated 18.11.2021 passed by a coordinate Bench of this Court. The relevant portion of which is reproduced hereinbelow:-

“Learned counsel for the petitioner(s) inter alia contends that the entire case against the petitioner is false on the face of it as the case of the prosecution is that the co-accused, while running from the spot, fired at the police whereas no empties were recovered and while drawing the attention of this Court to Annexure P-13 it is submitted that there is gross violation of Section 50 of the NDPS Act as the so called consent memo contains the number of the FIR at the time when the same had not even been registered. In any case, the consent memo is a joint consent memo for all the accused which is violation of the law settled by the Hon'ble Supreme Court in State of Rajasthan vs Parmanand (2014) 5 SCC 345.

Adjourned to 07.12.2021.

On the adjourned date the investigating officer is directed to appear before the Court.

A photocopy of this order be placed on the file of the other connected case.”

By referring to the said orders as well as record of the present case, learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and he has no criminal background. It has been submitted that although the alleged recovery from the petitioner Gurpreet Singh is stated to be of 536 grams of heroin and with respect to Sajan Singh it has been stated that the said person was also accompanying Gurpreet Singh @ Mani and thus, the recovery from the said petitioners is of commercial quantity, however he has highlighted the contents of the in the FIR so as to show discrepancies in the prosecution case and has submitted that in the present case as per FIR (page 33), the information is stated to have been received in the police station at 5:17 AM on 06.02.2020 and the FIR had been registered at 6:10 hours. Further reference has been made to allegation in the FIR as per which it is alleged that personal search, had also been conducted by the prosecution and reference has been made to page 35 of the FIR, wherein it has been stated that after the recovery was effected, the ruqa had been sent.

The first argument raised by learned counsel for the petitioners that as per the FIR, it is apparent that the information had been received at the Police Station at 5:17 AM on 06.02.2020 and the ruqa had been sent after the recovery had been effected and on the basis of the said ruqa, the FIR had been registered at 6:10 hours. It has been submitted that from the allegations in the FIR, it is also apparent that the personal search was conducted and the consent was taken prior to the registration of the FIR but however, a perusal of the consent memo of the accused (Annexure P-13 of CRM-23268-2020 in CRM-M-17503-2020) (vernacular of same at page 23 of the said CRM) would show that the same is a typed document and the

number of FIR had already mentioned in the same. The said document is sought to be compared with the recovery memo Annexure P-14 of the said CRM (vernacular of same at page 24) to show that name of the concerned police officer on both the documents are the same, however the signatures on page 24 of the said police officer are different from the signatures of the said police officer on page 23 and it is further highlighted that at page 24, the said recovery memo was hand written. Further reference has been made to Annexure P-15 (vernacular of the same at page 25) to highlight that the ruqa was also hand written and at page 26 the time was mentioned as 5:10 AM. It is pointed out that memo handing over the case property i.e. Annexure P-16 (vernacular of the same at page 27) was also hand written and the said document is prepared at the police station. It is, thus, submitted that the said documents, which were being prepared at the police station, as well as at the spot, were hand written but the consent memo was typed and the FIR number on the same was also typed. It is submitted that the said case shows that the consent memo is not a genuine document and for the said purpose, he has relied upon a judgment of Division Bench of this Court in ***Didar Singh @ Dara vs. The State of Punjab***, reported as ***2010(3) RCR (Criminal) 337***

The second argument of learned counsel for the petitioners is that a perusal of the consent memo (Annexure P-13) (vernacular at Page 23) would show a joint consent memo was prepared for the accused in the case and in the same four options were given, including the option to get the search done from ASI Lakhwinder Singh. It is submitted that since in the present case, as per the FIR, the personal search had also been conducted and thus, the provision of Section 50 of the NDPS Act had to be

mandatorily followed and giving an option of getting their search conducted from ASI himself would show that the mandatory provision of Section 50 of the NDPS Act had been violated and for the said purpose, he has relied upon the judgment of Hon'ble Supreme Court in ***S.K.Raju @ Abdul Haque @ Jagga vs. State of West Bengal*** passed in Criminal Appeal no.459 of 2017 decided on 05.09.2018 and ***State of Rajasthan vs. Parmanand and another*** passed in Criminal Appeal no.78 of 2005 decided on 28.02.20214.

The third argument raised by learned counsel for the petitioners is that a coordinate Bench of this Court, after considering the entire matter, was pleased to release the petitioners on interim bail vide order dated 17.12.2020 and had also observed that the conduct of the petitioners while they are on interim bail would also be taken into consideration at the time of final adjudication of the case. Learned counsel for the petitioners has pointed out that the petitioners have duly surrendered in pursuance of the said order and have not committed any offence while being on interim bail. It is also submitted that the petitioners are not involved in any other case.

The fourth argument raised by learned counsel for the petitioners is that both the petitioners have been in custody since 06.02.2020 and there are 12 prosecution witnesses and none of them have been examined and thus, the trial is likely to take time. It is further submitted that the petitioners were granted interim bail approximately for a period of six months but even if the said period is excluded, then also, the custody undergone by the petitioners is of 1 year 9 months each, thus even on account of the substantial period of incarceration, the petitioners deserve the concession of bail.

Learned State counsel has opposed the present petitions for

regular bail and has submitted that the argument raised with respect to consent memo being fabricated is a matter of trial and would only be considered after the concerned police official is examined and cross-examined. With respect to the argument of learned counsel for the petitioners that there has been a violation of Section 50 of the NDPS Act, it has been argued that in the present case, recovery had been effected from the kit bag and not from the personal search. It is further submitted that the personal search had been conducted as a matter of procedure, which is required to be done in every case. He has also submitted that there are several judgments which would further the proposition that if the recovery has not been made from the person of the accused and it is only subsequently that the accused is personally searched, then Section 50 of the NDPS Act need not be followed or any violation of the same would not render the recovery so effected to be bad. It is further submitted that as far as consent memo is concerned, all the accused had signed the same separately and thus, even if it is one joint consent memo, the same would also not further the case of the petitioners. With respect to the argument regarding the option given by ASI Lakhwinder Singh in the said consent memo, it is submitted that since in the present case, Section 50 of the NDPS Act is not applicable, thus the said issue is also irrelevant. With respect to the period of incarceration and fact that the petitioners are not involved in any other case, the same have not been disputed.

This Court has heard the learned counsel for the parties and has perused the paper book.

The first argument raised by learned counsel for the petitioners is to the effect that although as per the FIR, information had been received

at the police station at 5: 17 AM on 06.02.2020, the FIR contained the details with respect to the search conducted and also the fact that the ruqa had been sent after the entire recovery process had been completed. Perusal of the consent memo (Annexure P-13) (vernacular at page 23), which even as per the prosecution case, had been prepared prior to the recovery, would show that the number of the FIR had already been typed in the same. The Division Bench in ***Didar Singh @ Dara's*** case (supra) had observed as under:-

*“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In ***Ajay Malik & Ors. v. State of U.T. Chandigarh, 2009(3) RCR (Crl.) 649***, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e. either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.*

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32. *In view of the aforesaid discussion, the appeal is allowed and the impugned judgment of conviction and order of sentence passed by the Judge, Special Court, Amritsar are set aside. The appellant, who is in custody, be set at liberty forthwith if not required in any other case.”*

A coordinate Bench of this Court in ***Ajay Kumar @ Nannu's*** case (supra) had held as under:-

*“(iii) that mentioning of number of FIR and additional offences in the recovery memo shows manipulation and fabrication of recovery memo subsequently in the police station which denudes recovery memo of any sanctity and strikes out integrity and shatters credibility of the prosecution version and entitles the petitioners to grant of bail. In support of his arguments Mr. Vipul Jindal, learned Counsel for the petitioners has placed reliance on the observations in judgments passed in ***Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H); Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H);*** where mentioning of subsequent details in recovery memo was held to affect sanctity/credibility of recovery memo and ***Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M) titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M- 44921-2019 titled as 'Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided****

on 26.03.2019; CRM-M- 34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-2212- SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-36504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 where bail was granted/ suspension of sentence was allowed on this ground.

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16. In Mustakeem @ Sirajudeen Vs. State of Rajasthan : AIR 2011 SC 2769 it was held by Hon'ble Supreme Court that if the recovery memos were prepared at the Police Station itself then the same would lose its sanctity. In Ajay Malik Vs. State of U.T. Chandigarh : 2009(3) RCR (Criminal) 649 (P&H) it was held by this Court that presence of FIR details on recovery memos etc. leads to two inferences: either the FIR was registered prior to the alleged recovery of contraband or the number of FIR was inserted in these documents after its registration in both the situations it seriously reflects upon the integrity of the prosecution version. This view was upheld and reiterated by the Division Bench of this Court in Didar Singh @ Dara Vs. State of Punjab : 2010(3) RCR (Criminal) 337 (P&H) and mentioning of such details in recovery memo was held to affect sanctity/credibility of recovery memo. In Criminal Appeal No.1809 of 2009 titled as 'Ram Chander Sharma @ Pandit Vs. State (NCT of Delhi)' decided on 01.12.2020 (SC); CRM-M-38153-2019 (O&M) titled as 'Satish Kumar Vs. State of Punjab' decided on 11.02.2020; CRM-M-42370-2019 (O&M)

titled as 'Tarsem Lal Vs. State of Punjab' decided on 17.09.2020; CRM-M-44921-2019 titled as Gurdeep Singh Vs. State of Punjab' decided on 18.02.2020; CRM-M-32615-2018 titled as 'Rinku Singh Vs. State of Punjab' decided on 07.08.2018; CRM-M-61999-2018 titled as 'Jatinder Vashisht Vs. State of Punjab' decided on 26.03.2019; CRM-M-34433-2019 titled as 'Harvinder Singh @ Shammi Vs. State of Punjab' decided on 25.11.2019; CRM-20778-2018 in CRA-S-2212-SB-2016 titled as 'Kashmir Singh @ Koki Vs. State of Punjab' decided on 24.01.2019; CRM-19587-2019 in CRA-S-2884-SB-2016 titled as 'Charno Vs. State of Punjab' decided on 16.08.2019; CRM-M-6504-2020 (O&M) titled as 'Rajandeep Singh @ Ghughi Vs. State of Punjab' decided on 28.01.2021 and Mustkeem @ Sirajudeen Vs. State of Rajasthan (SC): 2011(3) RCR (Criminal) 766 bail was granted/suspension of sentence was allowed on this ground.

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20. *In view of the above, the petitions are allowed and the petitioners are ordered to be released on regular bail on furnishing of personal bond and bond of one surety in heavy amount to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”*

Similarly, a coordinate Bench of this Court in ***Rajandeep Singh @ Ghughi's*** case (supra) had held as under:-

*“In this backdrop, the submission made by Ld. Counsel for the petitioner is that in view of the decision of the Supreme Court in **Ram Chander Sharma @ Pandit v. State (NCT Delhi) Criminal Appeal No. 1809 of 2009**, the existence of the FIR on the recovery memo when the FIR was not itself drawn up would point to the case against the petitioner being a fabricated one. Reliance*

*has thereafter been placed upon an earlier decision of this Court in **Ajay Malik v. State of U.T. Chandigarh, 2009(3) RCR (Crl.)649 (P&H)** which was thereafter followed by the Division Bench in the decision of **Didar Singh @ Dara v. State of Punjab, 2010(3) RCR (Criminal) 337 (P&H) (DB)**. Various Benches of this Court have subsequently granted bail to such accused persons in view of these decisions wherever number of the FIR was seen to have been noted down in the documents purported prepared before registration of the FIR itself.*

[(i) CRM-M-38153-2019 titled Satish Kumar v. State of Punjab;

(ii) CRM-M-42370-2019 titled Tarsem Lal v. State of Punjab;

(iii) CRM-M-44921-2019 titled Gurdeep Singh v. State of Punjab;

(iv) CRM-M-32615-2018 titled Rinku Singh v. State of Punjab;

(v) CRM-M-61999-2018 titled Jatinder Vashisht v. State of Punjab;

(vi) CRM-M-34433-2019 titled Harvinder Singh @ Shammi v. State of Punjab.]

Similarly in :-

(vii) CRM-20778-2018 in CRA-S-2212-SB-2016 titled Kashmir Singh @ Kokki v. State of Punjab; and

(viii) CRM-19587-2019 in CRA-S-2884-SB-2016 titled Charno v. State of Punjab, the benefit of suspension of sentence even in favour of the convicts was granted by this Court for the same reason, i.e. existence of the F.I.R. number on the Recovery Memo/ Documents prepared before registration of the F.I.R.”

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separately relied upon an appropriate format of the Recovery Memo pertaining to Heroin in FIR No. 232 dated 24.09.2016, Police Station Chheharta Amritsar to demonstrate in what manner the relevant FIR number is to be shown. Perusal of the same goes to show that the recovery from the concerned accused Karan Singh @ Karan s/o Watan Singh was purportedly effected on 23.09.2016, but the relevant FIR No. 232 dated 24.09.2016 was separately entered on the margin which was totally distinct from the original contents with a separate/categorical noting that the memo in question pertains to the said FIR drawn up on the following day. The said document is now tagged as Annexure 'X' with the record. It would, therefore, be clear that such format was being followed by the Narcotic Cell Authorities of the area for more than three years prior to the apprehension of the petitioner in the present case, and so mentioning of the FIR number in the very beginning of the Recovery Memo as done in the present case, and not by way of a subsequent explanatory endorsement to indicate that it relates to the relevant FIR drawn up subsequently, would only go to support the contention raised on behalf of the petitioner.

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[11] The petition is, therefore, allowed and the petitioner is directed to be released on bail to the satisfaction of the Ld. Trial Court/ Duty Magistrate, concerned."

Perusal of the above said judgments would show that Division Bench as well as coordinate Bench of this Court had considered the contention raised by learned counsel for the present petitioner to be one of the points while granting regular bail to the petitioner therein. Even in a

case involving commercial quantity, it was observed that in such a situation only two inferences can be drawn, i.e., either the FIR was registered prior to the alleged recovery of contraband or the number of the FIR has been inserted in the document after its registration and both situations seriously reflect upon the integrity of the prosecution version and the same is a serious lapse in the prosecution case and creates a doubt in the prosecution theory. The coordinate Bench of this Court in ***Rajandeep Singh @ Ghughi's*** case (supra) had even explained as to how an entry was to be made with respect to the FIR which was entered into subsequently and it was observed that separate/categorical noting to the effect that FIR and its number having been mentioned, should be made. The same has not been done in the present case.

The issue which has been raised in the above said case would also arise in the present case. Even a perusal of the signatures on the consent memo (vernacular at page 23) and a perusal of the recovery memo (vernacular at page 24) would show that the signatures of the same police official on both the said documents are completely different. The documents Annexure P-14 recovery memo (vernacular at page 24), Annexure P-15 ruqa (vernacular at page 25), Annexure P-16 memo handing over case property (vernacular at page 27), all were hand written whereas, the consent memo was typed. The plea of learned counsel for the petitioners to the effect that the said consent memo is a document which has been prepared subsequently after the recovery, thus, cannot be outrightly rejected and thus the question of its authenticity would be matter of trial.

Learned counsel for the petitioners has also raised the argument that a perusal of the FIR would show that the personal search of the

petitioner had also been conducted and further the consent memo would show that the petitioners, even as per the case of the prosecution, were given a fourth option to get their search conducted from ASI Lakhwinder Singh. It is submitted that giving of the the said option would be violative of the provisions of Section 50 of the NDPS Act.

The Hon'ble Supreme Court of India in ***S.K. Raju's*** case (supra) had observed as under:-

“The question which arises before us is whether [Section 50\(1\)](#) was required to be complied with when charas was recovered only from the bag of the appellant and no charas was found on his person. Further, if the first question is answered in the affirmative, whether the requirements of [Section 50](#) were strictly complied with by PW-2 and PW-4.

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PW-2 conducted a search of the bag of the appellant as well as of the appellant's trousers. Therefore, the search conducted by PW-2 was not only of the bag which the appellant was carrying, but also of the appellant's person. Since the search of the person of the appellant was also involved, [Section 50](#) would be attracted in this case. Accordingly, PW-2 was required to comply with the requirements of [Section 50\(1\)](#). As soon as the search of a person takes place, the requirement of mandatory compliance with [Section 50](#) is attracted, irrespective of whether contraband is recovered from the person of the detainee or not.

In the said case, the provisions under Section 50 of the NDPS Act were attracted despite the recovery having been made only from the bag of the appellant therein, since his personal search had been conducted. The same principle is applicable in the present case.

Further the learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court of India in **Parmanand's** case (supra) in which it was observed as under:-

“15. We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of [Section 50\(1\)](#) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when [Section 50\(1\)](#) of the NDPS Act does not provide for it and when such option would frustrate the provisions of [Section 50\(1\)](#) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW-10 SI Qureshi is vitiated. We have, therefore, no hesitation in concluding that breach of [Section 50\(1\)](#) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal. The respondents have rightly been acquitted by the High Court. It is not

*possible to hold that the High Court's view is perverse.
The appeal is, therefore, dismissed."*

In the said case, PW-10 SI Qureshi had given a third option to the accused persons therein to be searched before PW-5 J.S.Negi who was a part of the raiding party. It was observed by the Hon'ble Supreme Court that the said option given to the accused was against the mandate of Section 50 of the NDPS Act and thus, the search conducted stood vitiated.

Learned State counsel has although very vehemently argued that the recovery in the present case is not on account of personal search and the said recovery was effected from the kit bag and the personal search of the petitioner was conducted subsequently, as is required to be conducted in every case and thus, the recovery from the kit bag do not stand vitiated on account of non compliance of Section 50 of the NDPS Act. In said regard, learned State counsel has referred to the judgment of the Hon'ble Supreme Court of India in ***State of Punjab vs. Baljinder Singh*** reported as **2020(1) RCR (Criminal) 58**.

Learned counsel for the petitioners in rebuttal has submitted that in ***Baljinder Singh's*** case (supra), recovery had been effected from the car involved therein and judgment of Hon'ble Supreme Court of India in ***S.K. Raju's*** case (supra) has not been considered in the said judgment.

The aforesaid facts would clearly show that even the question with respect to applicability of Section 50 of the NDPS Act to the present case is a matter of debate and raises arguable points. Both the petitioners are stated to be in custody since 06.02.2020 and although there are 12 witnesses, none of them have been examined and thus, the trial is likely to take time moreso, in view of the present pandemic. Both the petitioners

petitioners have not misused the said concession. Both the petitioners are not involved in any other case.

Learned counsel for the petitioners has also highlighted the fact that in various cases where recovery of commercial quantity was involved, the Hon'ble Supreme Court as well as this Court have, on the basis of arguable points in the bail application as well as by considering the period of custody and the merits of the case, granted bail/suspension of sentence. Some of the said judgments are being discussed hereinafter. In Criminal Appeal No.965 of 2021 titled as ***Dheeren Kumar Jaina v. Union of India***, the Hon'ble Supreme Court in a case where allegation in the charge sheet was with respect to 120 kg of contraband i.e. "ganja", thus, being of commercial quantity, was pleased to grant bail after setting aside the order of the High Court where the said application for grant of regular bail had been rejected.

A co-ordinate Bench of this Court in a detailed judgment titled as ***Ankush Kumar @ Sonu v. State of Punjab*** reported as ***2018 (4) RCR (Criminal) 84***, had considered the provision of Section 37 of the NDPS Act in extenso and had granted bail in a case which involved commercial quantity. The relevant portion of the said judgment is reproduced as under:

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But, so far as second part of Section 37 (1) (b) (ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of the petitioner as to

what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any offence' or 'offence under NDPS Act' after being released on bail, then this court, also, does not have any reasonable ground to be satisfied that the petitioner is likely to commit any offence after he is released on bail. Hence, this satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner.”

The Special Leave Petition (Criminal) Diary No.42609 of 2018 filed against the aforesaid judgment of the Co-ordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

Further, vide order dated 25.02.2021 in CRM-M-20177-2020, a Co-ordinate Bench of this Court granted regular bail to an accused who was involved in a case wherein recovery was of 3.8 kgs of “charas” (commercial quantity) after being in custody for 1 year and 7 months. The said order was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021 titled as **“Narcotic Control Bureau v. Vipin Sood and another”**.

The Hon'ble Supreme Court of India vide order dated 12.10.2020 passed in Criminal Appeal No.668 of 2020 titled as **“Amit Singh @ Moni v. Himachal Pradesh”** was pleased to grant regular bail in a case involving 3 kg and 800 grams of “charas” primarily on the ground of substantial custody and also, the fact that the trial would likely take time to conclude.

In Criminal Appeal No.827 of 2021 titled as **Mukarram Hussain v. State of Rajasthan and another**, the Hon'ble Apex Court vide judgment dated 16.8.2021 was also pleased to grant bail wherein the

quantity of the contraband was commercial in nature.

A Co-ordinate Bench of this Court in CRM-M 10343 of 2021 titled as ***Ajay Kumar @ Nannu v. State of Punjab*** and other connected matters, vide Order dated 31.03.2021, after taking into consideration the stipulations of Section 37 of the NDPS Act, was pleased to grant regular bail in a case involving commercial quantity and a condition was imposed on the petitioner therein while granting the said bail and the said condition was incorporated in para 21 of the said judgment, which reads as under:

“21. However, the petitioners are granted regular bail subject to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.”

Further, a Division Bench of this Court vide judgment dated 31.08.2021 passed in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as ***“Harpal Singh vs. National Investigating Agency and another”***, granted suspension of sentence in a case where the recovery was of commercial quantity. In the abovementioned order, the Division Bench had taken into consideration the right vested with an accused person/convict under Article 21 of the Constitution of India with regard to speedy trial. Further, the judgment of Hon'ble the Supreme Court in ***State (NCT of Delhi) v. Lokesh Chadha*** reported as ***(2021) 5 SCC 724*** was also taken into account and the provisions of Section 37 of NDPS Act were considered and the sentence of the applicant-appellant therein was suspended after primarily considering the period of custody of the applicant-appellant therein and also the fact that

was also made to the Division Bench judgment of this Court in ***Daler Singh v. State of Punjab*** reported as ***2007 (1) R.C.R. (Criminal) 316*** and the view taken in ***Daler Singh's*** case (supra) was reiterated and followed. In the above said judgment, it was also noticed that the grounds for regular bail stand on a better footing than that of suspension of sentence which is after conviction. It is apparent that to meet the requirement of Section 37 of the NDPS Act, various Courts have taken into consideration the merits of the case and the period of custody and where, in a case there are arguable points on merits and the custody is also adequate, the Hon'ble Supreme as well as various High Courts have granted bail even in cases involving commercial quantity.

Keeping in view the facts and circumstances of the present case and also the fact that there are arguable points in the present case and the custody of the petitioners is substantial and the trial is likely to take time, the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to them not being required in any other case. Moreover, to meet the object of Section 37 of the NDPS Act, this Court proposes to impose the following conditions that the petitioners shall abide by:-

1. The petitioners will not tamper with the evidence during the trial.
2. The petitioners will not pressurize / intimidate the prosecution witness(s).
3. The petitioners will appear before the trial Court on the date fixed, unless personal presence is exempted.

4. The petitioners shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
5. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail, before this Court.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

March 17, 2022

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No