

233+236

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

CRM-M-20683-2022
Date of Decision: 23.11.2022

Abhimanu Gupta @ Mannu Petitioner
Versus

State of Punjab Respondent

CRM-M-25371-2022

Sukhwinder Singh @ Sonu Petitioner
Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ajit Kumar Sharma, Advocate for
Mr. Imran Farooqi, Advocate,
for the petitioner in CRM-M-20683-2022.

Mr. D.S. Gandhi, Advocate,
for the petitioner in CRM-M-25371-2022.

Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

Both petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners and are being taken up together for final disposal with the consent of the learned counsels for the petitioners, since both the petitions arise out of the same FIR bearing No.100 dated 18.05.2021, under Sections 21/29/61 of the NDPS Act, 1985, registered at Police Station Civil Lines, District Batala.

Learned counsels for both the petitioners have submitted that both the petitioners are in custody for 1½ years and the investigation of the case has been completed and thereafter, challan has been presented before the competent Court and even charges have also been framed on 06.07.2022 but no witness has been examined as of now. Both the learned counsels have argued that it is a case where during patrolling the police had apprehended one Subham Mehra @ Shubham and one Harmeet Singh @ Gaurav, from whom there was an alleged recovery of 260 grams of *Heroin* and thereafter, on their disclosure statements, the names of the petitioners were nominated in the present FIR that the petitioners have supplied 50 grams each to the aforesaid co-accused persons, who were caught on the spot. They further submitted that thereafter, on the basis of disclosure statement, there was an alleged recovery of 260 grams of *Heroin* from the present two petitioners collectively. They also submitted that there was no recovery from the conscious possession of both the petitioners but as per the prosecution, the police recovered the aforesaid contraband from the cremation ground. They further submitted that the disclosure statement of the co-accused is *per se* not admissible in evidence and it is a case where there was no further recovery from the conscious possession of the petitioner even under Section 27 of the Evidence Act but it has been shown falsely by the police that the recovery was effected from the cremation ground. They also submitted that both the petitioners have got clean antecedents and they are not involved in any other case and it was only because of false implication on the basis of disclosure statement made by

the aforesaid co-accused, the names of the petitioners were nominated in the present case. They further submitted that even otherwise also the aforesaid main co-accused from whom the recovery was made, namely, Subham Mehra @ Shubhan has already enlarged on regular bail by a Co-ordinate Bench of this Court in CRM-M-36888-2021 on 05.01.2022 and the order of the same is attached as Annexure P-2. They also submitted that in view of the aforesaid position as well, the petitioners, who are otherwise nominated on the basis of the disclosure statement, may be considered for the grant of regular bail.

On the other hand, Mr. Amit Rana, learned Senior Deputy Advocate General, Punjab has submitted that it is correct that both the petitioners have suffered incarceration for about 1½ years and after the framing of the charges, no witness has been examined till date. He has however submitted that there had been recovery of 260 grams of *Heroin* from both the petitioners collectively, and therefore, bar contained under Section 37 of the NDPS Act will apply in the present case. He has not disputed that the other co-accused, who is the main accused, namely, Subham Mehra @ Shubham has been extended the benefit of regular bail by a Co-ordinate Bench of this Court vide Annexure P-2. He further submitted that it is correct that both the petitioners are not involved in any other case and the recovery was from the cremation ground and not from the conscious possession of the petitioners.

Learned counsels for the petitioners have however stated that even if the recovery was of 260 grams of *Heroin* but the same is allegedly

collectively qua both the petitioners and has referred to the judgment of Hon'ble Supreme Court passed in “*Amar Singh Ramjibhai Barot Vs. State of Gujarat*”, (2005) AIR (SC) 4248, to contend that the recovery has to be treated as individual recovery and in that case the recovery was effected from the personal search of the petitioner whereas there is no recovery from the conscious possession from either of the petitioners.

I have heard the learned counsel for the parties.

The name of the petitioners was nominated on the basis of the disclosure statement of the co-accused and that co-accused himself has been extended the benefit of bail by a Co-ordinate Bench of this Court vide Annexure P-2. As per the learned counsel for the parties, both the petitioners have faced incarceration for 1½ years and they are not habitual offender and even as per the prosecution itself, there was no recovery from the personal search of the petitioners but it was from the cremation ground.

In view of the aforesaid position, the bar contained under Section 37 of the NDPS Act will not apply in the present case. Furthermore, it is not the case of the State not it has been argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may influence any witness or may repeat the offence.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant bail to both the petitioners. Consequently, both the petitions are allowed and both the petitioners are ordered to be released on bail on furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

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

23.11.2022

(JASGURPREET SINGH PURI)
JUDGE

Bhumika

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