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

Date of decision: 06.04.2022

1. CRM-M No.30279 of 2021 (O&M)

Kali Bahadur Rawat

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M No.5900 of 2022 (O&M)

Jang Kanwar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vijay Lath, Advocate
for the petitioner (in CRM-M-30279-2021)

Mr. Amandeep Saini, Advocate
for the petitioner (in CRM-M-5900-2022)

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in these petitions is for grant of regular bail to the petitioners namely Kali Bahadur Rawat and Jang Kanwar under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.008 dated 08.01.2021, under Sections 18, 20, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS

Act') registered at Police Station Lalru, District S.A.S. Nagar, Mohali.

Counsel for the petitioners have submitted that as per the allegations in the FIR, registered at the instance of ASI Kuldeep Singh, 02 boys were seen standing on the road side and on seeing the police party, they started moving towards the un-metalled passage. Thereafter, on suspicion they were apprehended and the first person disclosed his name as Parmod Jang Shah and the other person disclosed his name as Kamaldev Gharti. Thereafter, on suspicion of carrying some narcotic substance in the bag, which they were carrying on their shoulder, an information was sent to the Police Station and thereafter, by giving a notice under Section 50 of the NDPS Act, the Deputy Superintendent of Police, was called at the spot and recovery of 6000 tablets of LOMOTIL, 75 vials of BIORAX and 900 tablets of NITRAVET-10 were effected from Parmod Jang Shah whereas the recovery of 9.500 Kgs of Charas and 2.00 Kg of Opium was effected from Kamaldev Gharti.

Counsel for the petitioners have also submitted that at that time, the petitioners were in custody in some other case i.e. FIR No.216 dated 30.12.2020 registered under Sections 18 and 29 of the NDPS Act, at Police Station Lalru. It is also argued that after the arrest of the aforesaid 02 persons, the police recorded their disclosure statements and thereafter, the petitioner while in judicial custody were nominated in this case. It is further submitted that in the earlier case where the petitioners were arrested in FIR No.216, the petitioner – Kali Bahadur Rawat, has already been released by this Court vide order dated 02.07.2021 passed in CRM-M No.19083 of 2021 while the petitioner –

Jang Kanwar, has been released by this Court vide order dated 19.01.2022 passed in CRM-M No.53415 of 2021.

Counsel for the petitioners have also argued that in pursuance to their nomination in the present case, nothing has been recovered as they were already in judicial custody.

Counsel for the petitioners have relied upon the judgment ***“Tofan Singh vs State of Tamil Nadu”*, 2021(4) SCC 1**, to submit that it will be a debatable issue whether the disclosure statement made by the co-accused will be admissible against the petitioner or not.

Lastly, it is submitted that both the petitioners are in custody for the last about 01 year, 03 months and out of 13 PWs, no PW has been examined, so far.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that both the petitioners are in custody for the last about 01 year and 03 months; the custodial interrogation of the petitioners is not required; out of 13 PWs, no PW has been examined and the conclusion of the trial will take some time and in view of the judgment of the Hon'ble Supreme in ***Tofan Singh's case (supra)***, both these petitions are allowed and the petitioners namely Kali Bahadur Rawat and Jang Kanwar are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for

cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

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

(ARVIND SINGH SANGWAN)
JUDGE

06.04.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No