

**CRM-M-46182-2021 and
CRM-M-42579-2021**

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

**CRM-M-46182-2021
Date of Decision: 16.08.2022**

**(I)
Amarjit Singh**

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CRM-M-42579-2021

**(II)
Angrej Singh**

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

**Present: Mr. Vishal Khatri, Advocate, for
Mr. Vijay K. Jindal, Advocate, for the petitioners.
Mr. Randhir Singh Thind, DAG, Punjab.**

JASGURPREET SINGH PURI, J. (Oral)

**Both the petitions are taken up together for final disposal with
the consent of learned counsel for the parties since both the petitions have
been filed for grant of regular bail in the same FIR.**

Both the petitions have been filed under Section 439 of the

Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No. 24 dated 02.03.2021, under Sections 18, 21, 29 of NDPS Act, registered at Police Station Kalanaur, District Gurdaspur.

As per the allegations both the petitioners were caught on the spot and on search being made there was alleged recovery of 6 kg. 200 grams of opium and 40 grams heroin from both the petitioners.

The learned counsel for the petitioners has submitted that both the petitioners are in custody from 02.03.2021 which is more than 1 year and 5 months and the investigation of the case has been completed and charges are yet to be framed. He further submitted that the challan was presented on 21.09.2021. He further submitted that it is a case where there has been a total non-compliance of mandatory provisions of Section 50 of the NDPS Act. He referred to Annexure P-5 which is a non-consent memo of the petitioner to state that when the offer under Section 50 of the NDPS Act was given to both the petitioners, then the offer was totally defective. As per the offer both the petitioners were given option to be searched from three persons i.e. the SI, a Gazetted Officer and Illaqa Magistrate. He further submitted that as per the provisions of Section 50 NDPS Act offer has to be given only for getting searched from a Gazetted Officer or a Magistrate and nothing more can be added to the aforesaid provisions of under Section 50 of the NDPS Act. He further submitted that there is a violation of the mandatory provisions of Section 50 of the NDPS Act and therefore, on this basis the entire proceedings can be vitiated and in view of the aforesaid position the bar contained under Section 37 of the NDPS Act will not apply in the present case.

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that it is correct that both the petitioners are in custody from 02.03.2021 and investigation of the case has been completed and thereafter the challan has been presented. He further submitted that it is correct that the offer was pertaining to three persons i.e. SI himself, a Gazetted Officer and an Illaqa Magistrate. He has however submitted that thereafter when the DSP came he also gave an offer where he stated that they have option to be searched from a Gazetted Officer or a Magistrate and gave a valid offer.

I have heard the learned counsel for the parties.

As per the learned counsel for the parties, both the petitioners are in custody from 02.03.2021 which is more than 1 year and 5 months. The quantity involved in the present case is commercial quantity and therefore, this Court has to consider the effect of bar contained under Section 37 of the NDPS Act. As per the offer which was given by the Sub Inspector and which is not controverted by the learned State counsel, the same was ex facie defective in nature since an option was given for being searched either from the SI himself or a Gazetted Officer or an Illaqa Magistrate and therefore, there are two violations in the present offer and consequently, the offer was totally defective. It is a settled law that the provisions of Section 50 of the NDPS Act are mandatory in nature and the violation of the same is relevant for the purpose of grant of regular bail to the petitioners. The argument raised by the learned State counsel that the subsequent offer was given by the DSP for getting search from a Gazetted Officer or a Magistrate would not be any avail to the prosecution since the

initial offer itself was defective ex facie. Therefore, this Court is of the view that there are reasons to believe that prima facie both the petitioners are not guilty of offence in view of the violation of Section 50 of the NDPS Act. Apart from the same, so far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, as per the learned counsel for the parties, both the petitioners are not involved in any other case and it is not the case of the State that in case the petitioners are released on bail, then they may repeat the offence and therefore, the second ingredient contained under Section 37 of the NDPS Act for making a departure from the bar contained therein also remain satisfied. Therefore, the twin conditions in the present case for making a departure from the bar contained under Section 37 NDPS Act remain satisfied.

Consequently, both the petitions are allowed. Both 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 hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petitions only.

At this stage, this Court also wishes to note that as per the prosecution, there was a confiscation of commercial quantity from both the petitioners. However, there is no justification as to why while giving an offer under Section 50 NDPS Act, such a language was used to include the

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Consequently, it is directed that a copy of this order be sent to the concerned Inspector General of Police for information.

16.08.2022
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No