

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

1. CRM-M-47420-2021

Date of Decision: 18.05.2022

Ashish Aggarwal

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-45519-2021

Javed Khan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner in CRM-M-47420-2021.

Mr. Rajesh Lamba, Advocate
for the petitioner in CRM-M-45519-2021.

Mr. R.S. Arya, Addl. AG, Haryana.

JASGURPREET SINGH PURI, J.(ORAL)

1. Both the present petitions have been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioners in FIR No.566, dated 22.09.2021 under Sections 22 (c), 29 and 61 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of NDPS Act added later on) registered at Police Station Mujjesar, District Faridabad.

2. Both the aforesaid petitions are being taken up together with the consent of the learned counsel for the petitioners for final disposal since the

same arise out of the same FIR.

3. As per the allegations in the FIR, two persons were apprehended namely, Rohit and Subhash and there was a recovery of 14 injections of Buprenorphine of 2 ml. each from Rohit and 12 injections of Buprenorphine of 2 ml. each from Subhash. Thereafter, they made a disclosure statement that they had purchased intoxicated injections from some medical store from Uttar Pradesh and thereafter they again made a disclosure statement that they had purchased the same from the present petitioners namely Ashish Aggarwal and Javed Khan.

4. Learned counsel for the petitioners have stated that both the petitioners namely Ashish Aggarwal and Javed Khan are in custody from 24.09.2021 and investigation of the case has been completed and challan has been presented. Both the learned counsels for the petitioners have submitted that the petitioners have clean antecedents and they are not involved in any other case. They further submitted that they have been falsely implicated only on the basis of the disclosure statement made by the other co-accused, who were apprehended on the spot and such a disclosure statement of a co-accused is not admissible in evidence particularly in view of the law laid down by the Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) R.C.R. (Criminal)1**. They further submitted that there is no other evidence or sufficient material with the prosecution to connect the present petitioners with the present offence apart from the aforesaid disclosure statement, which is otherwise not admissible in evidence. They further submitted that the only ground which has been taken by the State in the affidavit is that there has been a recovery of Rs.25,000/- from the petitioner Ashish Aggarwal and Rs.20,500/- from the petitioner Javed Khan i.e. total of Rs.45,500/- from the aforesaid accused. Learned counsel for the petitioners submitted that one of

the petitioner namely Ashish Aggarwal is the owner of medical store namely Balaji Medical Store and so far as the second petitioner Javed Khan is concerned, his brother is running the business of medical store and therefore as a businessman they are always having cash in their hands for the purpose of running the business and therefore merely a recovery of Rs.45,500/- in cash from the aforesaid accused would not mean that this is a sufficient material for connecting the petitioners with the present offence.

5. On the other hand, learned State counsel has submitted that an affidavit has been filed by the Deputy Commissioner of Police, NIT, Faridabad and by referring to the affidavit, he has submitted that the two co-accused namely Rohit and Subhash were apprehended on the spot and there was a recovery of total 26 intoxicating injections of Buprenorphine from them and it is correct that both the petitioners were nominated on the basis of the disclosure statement of the aforesaid co-accused. He further submitted on instructions received from ASI Dinesh that it is correct that both the petitioners are not involved in any other case and their custody is also not in dispute. He has however opposed the grant of regular bail to the petitioner on the ground that the total 26 injections i.e. 14 injections from Rohit and 12 injections from Subhash of 2 ml. each of Buprenorphine falls in the category of commercial quantity and therefore, the case of the present petitioners is hit by the bar contained under Section 37 of the NDPS Act.

6. I have heard the learned counsel for the parties.

7. The custody of both the petitioners is not in dispute. It is also not in dispute that both the petitioners have clean antecedents and they are not involved in any other case. The investigation of the case has already been completed. It is also an admitted position which is also stated in the affidavit filed by the State that the name of the petitioners has been nominated only on

the basis of the disclosure statement made by the other co-accused. The only ground available with the State as per the affidavit and as per the learned State counsel that there has been a recovery of Rs.25,000 + 20,500 = Rs.45,500/- from both the petitioners. Neither there is anything in the affidavit nor there is any argument raised by the learned State counsel to suggest as to how the petitioners are connected with the present offence apart from the disclosure statement made by the co-accused. Furthermore, there is nothing in the affidavit nor there is any argument raised by the learned State counsel that in case, the petitioners are released on bail then they may repeat the offence.

8. Therefore, considering from the angle of bar contained under Section 37 of the NDPS Act, it can be seen that mere recovery of cash amount of Rs.25,000/- and Rs.20,500/- itself cannot constitute a good ground for connecting the petitioners with the present offence as there has been no recovery of contraband from them. So far as the second ingredient for making departure from Section 37 of the NDPS Act is concerned, it is not the case of the State that in case the petitioners are released on bail then they may repeat the offence or may abscond from justice. Therefore, both the ingredients contained under Section 37 of the NDPS Act from making a departure are satisfied.

9. This Court is therefore of the prima facie view that at least at this stage, there are reasons to believe that the petitioners are not guilty of present offence and therefore, the bar contained under Section 37 of the NDPS Act would not apply to both the petitioners.

10. Consequently, both the present petitions are allowed and both the petitioners are ordered to be released on bail on their furnishing adequate bail/surety bonds to the satisfaction of the learned trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

11. It is made clear that the aforesaid observations would not mean anything on the merits of the case, as the same are only for the purpose of deciding the present petitions.

(JASGURPREET SINGH PURI)
JUDGE

May 18, 2022
Manpreet

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