

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

281+282+283

CRM-M-19903 of 2022 (O&M)

Date of Decision:10.08.2023

Rajdeep Singh @ Sonu

....Petitioner

Versus

State of Haryana

.....Respondent

2)

CRM-M-26896 of 2023 (O&M)

Rajjo Bai @ Raj Kaur

....Petitioner

Versus

State of Haryana

.....Respondent

3)

CRM-M-35940 of 2023

Rinku

....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Parminder Pal Singh, Advocate,
for the petitioner in CRM-M-19903-2022.

Mr. Chandan Singh Rana, Advocate,
for the petitioner in CRM-M-26896-2023.

Mr. D. S. Virk, Advocate,
for the petitioner in CRM-M-35940 of 2023.

Mr. Vishal Kashyap, DAG, Haryana

JASGURPREET SINGH PURI, J. (Oral)

1. All the three cases are taken up together for final disposal
with the consent of learned counsel for the parties since the same arise

out of the same FIR and the prayer made in all these three cases is for grant of regular bail.

2. All these petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner(s) in FIR No.40 dated 06.02.2022, under Section 21(C) of the NDPS Act, 1985, registered at Police Station Sadar Tohana, District Fatehabad.

3. All the learned counsels appearing on behalf of the petitioners have submitted that all the three petitioners are in custody from 06.02.2022, which is almost 1½ years and as per the allegations, the petitioners who were sitting in the car were apprehended by the police party and there was an alleged recovery of 410 grams of heroin alongwith the polythene bag. They have submitted that the charges in the present case were framed 06.12.2022 and only two prosecution witnesses have been examined till date.

4. All the learned counsels have further submitted that it is a case where there had been a non-compliance of Section 50 of the NDPS Act. They submitted that a perusal of the FIR would show that an offer was made to get themselves searched in the presence of a gazetted officer or a Magistrate and thereafter they chose to be searched in the presence of a Magistrate which is evident from the FIR itself. However, instead of getting their search conducted in the presence of a Magistrate as per their wish and as per the provisions of Section 50 of the NDPS Act an officer was called who was not a Magistrate but was only a

gazetted officer. They submitted that in view of the above, the entire recovery get vitiated due to total violation of the provision of Section 50 of the NDPS Act and therefore considering the aforesaid position and also the long custody of the petitioners, they may be considered for the grant of regular bail. They also submitted that all the petitioners have been falsely implicated in the present case and they are not involved in any other case except for one of the petitioners, namely, Rajjo Bai @ Raj Kaur who is involved in one more case under the NDPS Act which does not pertain to commercial quantity.

5. On the other hand, Mr. Vishal Kashyap, learned DAG, Haryana has stated that so far as the custody of the petitioners is concerned, the same is correct and it is also correct that the petitioners are not involved in any other case except for one case in which one of the petitioners, namely Rajjo Bai @ Raj Kaur is involved. He submitted that so far as the argument raised by learned counsel for the petitioners pertaining to violation of Section 50 of the NDPS Act is concerned, he has sought specific instructions and also got the notification issued by the Deputy Commissioner, Fatehabad, dated 31.12.2021 wherein the officer who was called has been mentioned at Sr. No.8. He submitted that by way of the aforesaid notification issued by the Deputy Commissioner, the officer which have been mentioned in the list are the gazetted officers.

6. I have heard learned counsel for the parties.

7. All the petitioners are stated to be in custody for one year

and six months and basic argument which has been raised by learned counsel for the petitioners is that the provision of Section 50 of the NDPS Act has not been complied with. It is not in dispute that when an offer was made to the petitioners then they asked for their search to be conducted in the presence of a Magistrate. However, as per learned State counsel and the notification relied upon by him, the person who was called was not a Magistrate but was only a gazetted officer. Therefore, apparently there appears to be violation of Section 50 of the NDPS Act. Therefore, this Court is of the view that the bar contained under Section 37 of the NDPS Act will not apply in the present case even if the alleged recovery was of 410 grams of heroin which falls within the category of commercial quantity under the NDPS Act. Consequently, all the three petitions are allowed. The petitioners shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

8. It is made clear that anything contained in the aforesaid order especially pertaining to Section 50 of the NDPS Act will not mean any observation on merits which can be seen only at the time of trial but it is only for the purpose of deciding the present three petitions.

(JASGURPREET SINGH PURI)

JUDGE

August 10, 2023

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Whether speaking : Yes/No

Whether reportable : Yes/No