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IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CRM-M-26565-2021

Date of Decision: 04.08.2021

RAVINDER @ RAVI @ RAVINDER PAL

..... Petitioner

Versus

STATE OF HARYANA

..... Respondent

(II)

CRM-M-29788-2021

GURPREET @ GOPI

..... Petitioner

Versus

STATE OF HARYANA

..... Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. L. S. Sekhon, Advocate  
for the petitioner in CRM-M-26565-2021.

Mr. Aman Dhir, Advocate  
for the petitioner in CRM-M-29788-2021.

Mr. Vishal Kashyap, DAG, Haryana  
assisted with ASI Darshan Singh.

(proceedings conducted through video conferencing)

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**GURVINDER SINGH GILL, J. (ORAL)**

1. This order shall dispose of the above mentioned two petitions wherein petitioner(s) Ravinder @ Ravi @ Ravinder Pal and Gurpreet @ Gopi seek grant of regular bail in a case FIR No.338 dated 22.12.2020 registered at Police Station- Sadar Kaithal, District Kaithal under

Sections 18 (C) of NDPS Act, 1985 ( Sections 18-B, 27-A, and 29/61/85 of

the NDPS Act added later on).

2. The case of the prosecution is that on 22.12.2020, a secret information was received by the police to the effect that Karamjit, Gurpreet Singh @ Gopi and Ravinder @ Ravi @ Ravinder Pal indulged in sale of 'Opium' and that even on the said date Gurpreet alongwith his companions would be coming in a white coloured Verna car bearing registration No. PB-31-F-8117 to village Baba Ladhana. Pursuant to receipt of said information barricading was laid and upon noticing the car in question the same was signaled to stop which was having three occupants. Upon inquiry the driver disclosed his name as Gurpreet, while the passenger sitting on the front seat disclosed his name as Karamjit and the person sitting on the rear seat disclosed his name as Ravinder. All three were extended an offer of in terms of Section 50 of the NDPS Act separately. The aforesaid three opted their search before a Magistrate. After arrival of Sh. Ishwar Singh, Naib Tehsildar, he was apprised about the facts, who enquired about the same from three apprehended persons turn by turn and also perused the notices under Section 50 of the NDPS Act. Upon search of the said three persons 'Opium' weighing 3.5 kgs was recovered from a red checkered blanket from Karamjit Singh.

3. Learned counsel for the petitioner has raised the following two contentions:-

- (i) Since the Naib Tehsildar did not himself also extend an offer in terms of Section 50 of the NDPS Act, therefore, the entire proceedings stands vitiated as it cannot be said that provisions of Section 50 of the NDPS Act have been complied with in letter and spirit. Learned counsel for the

petitioner in order to hammer forth his aforesaid submission places reliance upon a judgment titled “Joginder Singh Vs. State of Punjab 2019 (3) RCR (Criminal) 291”.

- (ii) It is submitted that since the alleged contraband i.e. 3.5 kgs. of 'Opium' was recovered from the personal search of Karamjit, the petitioner(s) from whom no contraband was recovered either from the personal search or from the vehicle, cannot be attributed conscious possession of recovered contraband.

4. Opposing the petition, learned State counsel has submitted that since there was prior secret information against all the three accused, who were apprehended together and since search one of one of the accused led to recovery of 3.5 kgs 'Opium', the petitioners cannot feign ignorance about the contents of the bag being carried by the co-accused Karamjit and that he can be very safely attributed conscious possession of the contraband in question. It has further been submitted that in the instant case the provisions of Section 50 of the NDPS Act, stands duly complied with as a valid offer was extended to the accused and that the Magistrate, who subsequently reached at the spot pursuant to exercise of option by the accused was not required to extend any such offer again.

5. I have considered rival submission addressed before this Court.

6. Having regard to the fact that it is a case of recovery of 3.5 kgs of 'Opium' from the personal search of a co-accused Karamjit, it will certainly be debatable as to whether the petitioners who were also travelling in the same car can be attributed conscious possession of the said

contraband or not. The petitioners have been behind bars since the last more than 8 months and are not stated to be involved in any other case. In these circumstances, the petitioners deserve the concession of bail. The petition, as such, is accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

7. Before parting this order, this Court is of the opinion that the provisions of Section 50 of the NDPS Act, would stand complied with once the empowered police officer apprises the apprehended person of his right to be searched in the presence of a Magistrate or a Gazetted Officer. In case, such person opts to be searched in the presence of a Gazetted Officer and a Magistrate and such Gazetted Officer/Magistrate comes to the spot, he at best, is required to introduce himself being a Gazetted Officer or a Magistrate and apprise himself of the facts by generally questioning the police officials or the apprehended person but is not required to extend fresh offer in terms of Section 50 of the NDPS Act. In case Section 50 of the NDPS Act, is to be interpreted in this manner that even the Gazetted Officer and Magistrate is required to give a fresh option then it will be an endless exercise inasmuch as the accused may every time gave his option to be searched from some other officer.

8. However, in Joginder Singh's case (supra), judgment passed by a Coordinate Bench a different opinion has been expressed which for the sake of ready reference reads as follows:-

“XX XX XX XX

(i) The mandatory guidelines, which should be followed by the Investigating Officers, are as under: -

XX XX XX XX

The Gazetted Officer or Magistrate before whom any such

person is brought shall also comply with the provision of Section 50 of the NDPS Act by apprising the person of his/her right.

XX XX XX XX ”

9. The said matter needs to be examined by a Larger Bench in view of a different opinion held by this Bench. The matter, as such be referred to Hon'ble the Chief Justice for referring the matter, if same deemed appropriate to a Larger Bench to settle the aforesaid controversy.

10. The matter pertaining to grant of bail in both the petitions however, stands disposed of.

**04.08.2021**

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**(GURVINDER SINGH GILL)  
JUDGE**

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