

2025:PHHC:115874



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

Date of decision : 28.08.2025

1.

CRM-M-39526-2024

Jaswinder Kumar

....Petitioner

Versus

State of Punjab

....Respondent

2.

CRM-M-24109-2024

Davinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

Present: Mr. Mikhail Kad, Advocate,
and Mr. Jagjit Singh, Advocate,
for the petitioner (in CRM-M-39526-2024).

None for the petitioner (in CRM-M-24109-2024).

Mr. Ajitpal Singh, Addl. A.G., Punjab.

SHEEL NAGU, CHIEF JUSTICE (Oral)

1. This order shall dispose of two petitions (CRM-M-39526-2024 and CRM-M-24109-2024) filed by petitioners, Jaswinder Kumar and Davinder Singh, for grant of regular bail in FIR No. 23 dated 02.02.2024, under Sections 22, 29 of

Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station, Sadar Khanna.

2. The petitioners, who have no antecedents, are in custody since 02.02.2024 and are alleged with recovery of 1680 tablets of Lomotil containing narcotic drugs, which is of commercial quantity.

3. Thus, the petitioners have to cross the hurdle of Section 37 of the NDPS Act by establishing that there is no *prima facie* case established against them.

4. Learned counsel for the petitioners has relied upon the decision of the Apex Court in the case of **State of Rajasthan vs. Parmanand and another**, 2014 (5) SCC 345, relevant extract of which, is reproduced below:-

“15. We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of section 50(1) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched

before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of section 50(1) of the NDPS Act. On this ground also, In our opinion, the search conducted by PW-10 SI Qureshi is vitiated. We have, therefore, no hesitation in concluding that breach of section 50(1) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal. The respondents have rightly been acquitted by the High Court. It is not possible to hold that the High Court's view is perverse. The appeal is, therefore, dismissed.”

5. It is contended that in the present case, the offer as regards search, was made to the petitioners that they are free to be searched by a Magistrate or a Gazetted Police Officer, whereas the offer ought to have been made to be searched before a Magistrate or Gazetted Officer. The petitioners chose the Gazetted Police Officer.

6. The aforesaid discussion of the Apex Court has been relied upon by a Co-ordinate Bench in **Gurpreet Singh vs. State of Punjab**, CRM-M-39246-2023 (decided on 17.08.2023) and **Gurpal Singh vs. State of Punjab**, CRM-M-26769-2023 (decided on 05.09.2023).

7. In view of the above, the prosecution has failed to prove a *prima facie* case against the petitioners and therefore, the obstacle of Section 37 of NDPS Act shall not come in the way of the petitioners.

8. However, it is informed by learned State counsel that all the prosecution witnesses have been examined and the trial

is fixed for recording of statements of the accused under Section 313 Cr.P.C. (Section 351 of BNSS).

9. In view of the above, the possibility of petitioners, on being released, affecting the prosecution story does not appear to exist.

10. Accordingly, the petitioners are ordered to be released on bail subject to their furnishing bail bonds in the sum of Rs.50,000/- with two sureties of the same amount each, to the satisfaction of the trial court/Duty Magistrate, subject to the conditions stipulated in Section 437 (3) Cr.P.C./Section 480 (3) of BNSS, 2023 and following condition:

- (i) the petitioners shall plant 10 saplings of indigenous plants at a public place and submit proof in that regard by way of photographs before the trial court within a period of 15 days and if there is no such intimation submitted or intimation is found to be incorrect, then the State can move an application for cancellation of bail of the petitioners.

11. Both the petitions stand allowed.

**(SHEEL NAGU)
CHIEF JUSTICE**

August 28, 2025
Ajay Prasher

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