

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

**CRM-M-3552-2016 (O&M)
Date of decision : 27.05.2016**

Lakhbir Singh @ Lakha

..... Petitioner(s)

Versus

Narcotics Control Bureau

.... Respondent(s)

CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Tanu Bedi, Advocate with
Mr. Baljinder Singh, Advocate,
for the appellant(s).

Mr. D.D. Sharma, Advocate,
for the respondent.

JITENDRA CHAUHAN.J.

By filing this petition under Section 439 of the Code of Criminal Procedure, petitioner Lakhbir Singh alias Lakha seeks regular bail in case bearing NCB Crime No. 14 dated 05.05.2015 under Section 8/18/29 of Narcotics Drugs and Psychotropic Substances Act, 1985 registered at Police Station, Narcotic Central Bureau, Chandigarh Zonal Unit, Chandigarh.

In brief, the case of the prosecution is that on 04.05.2015,

secret information was received by NCB, Chandigarh that

approximately 100 kg. of opium was likely to be delivered to Sukhbir Singh @ Sukha and his younger brother Lakhbir Singh @ Lakha (petitioner) on the intervening night of 4/5.05.2015 at their cattle shed located on Barnala Road, Sirsa. Thereafter, NCB, Chandigarh in joint operation with Special Task Force, (I.G. Range), Hisar and the local police raided the residential premises of the aforementioned Sukhbir Singh on 05.05.2015 at around 0900/0930 hrs. Sukhbir Singh and Lakhbir Singh (petitioner) were both present in the premises and on interrogation, they suffered disclosure statements and got recovered 36.150 kilograms opium and Indian currency notes amounting to Rs.19,40,000/-. Two representative samples of 25 grams each were taken from the recovered contraband in the presence of the accused. The remaining opium of 15.975 kg. was placed in one steel box, locked and sealed with the seal of Narcotics Control Bureau CHD-3. During the interrogation, accused Sukhbir Singh (non-petitioner) disclosed that one consignment of opium was given to Labh Singh resident of Jandwala, Jattan, Sirsa. After completion of necessary formalities, a complaint under Section 8 punishable under Section 18 and 29 of NDPS Act was filed before the Court of Special Judge, Sirsa.

On behalf of the petitioner, it is contended that the petitioner is in custody since 05.05.2005. The recovery allegedly effected from the petitioner is planted one. The rigour of Section 37 of the NDPS Act is not attracted because the contraband was not found in the conscious possession of the petitioner. The disclosure statement did

not lead to any recovery, therefore, the same is of no help. The accused-petitioner is implicated in the present case as on most of the documents his signatures are missing. There is no evidence collected by the Investigating Agency against the petitioner to connect the petitioner with the alleged recovery of contraband. The CD relied upon by the prosecution does not pertain to the petitioner in any manner whatsoever. There is no evidence with the prosecution to say that the voice in the CD is that of the petitioner. The petitioner had withdrawn the amount from his bank for making payment as earnest money to buy a plot in the city. The money was not connected with the transaction under hand. The mobile number of the petitioner was never intercepted. There is no allegation of any abuse or misuse of the said number for the purpose of drug business.

On the other hand, the learned Counsel for the respondent has submitted that both the accused Sukhbir Singh and Lakhbir Singh were arrested and they both suffered disclosure statement under Section 67 of the NDPS Act. They disclosed the names of the persons buying opium from them as well as the names of the persons who were selling opium to them. They further disclosed about their accomplices. Their accomplices were issued notices under Section 67 of the NDPS Act to join the investigation but they did not join. Non bailable warrant have been issued against them by the Court of Chief Judicial Magistrate, Sirsa. It is further contended that heavy quantity of opium has been recovered from the accused, so Section 37 of the NDPS Act is

attracted. It is further contended that the father of the petitioner is also a convict under the NDPS Act and the antecedents of the family of the petitioner are not clean and clear. They are involved in such illegal activities.

I have heard learned counsel for the parties and have gone through the case file.

During the course of arguments, the learned State counsel has handed over a sealed envelope, which is opened in the Court. It is found to contain a letter dated 15.06.2015 purportedly written by Zonal Director, NCB Chandigarh to the Superintendent of Police, Sirsa regarding suspected involvement of CIA Inspector, Joginder Singh of District Police, Sirsa. The same is taken on record as Mark-A.

In the present case, recovery of 36.150 kg. opium along with Rs.19,40,000/- is alleged to have been made from the farm house of the petitioner and his co-accused. The petitioner suffered disclosure statement. During the course of hearing, conversation alleged to have taken place between Sukhbir Singh @ Sukha and the petitioner has been placed on record as Mark-B. To establish the veracity of the conversation, the respondent had filed an application before the learned Trial Court to have the voice sample of the petitioner but he refused to submit the same. Therefore, an adverse inference has to be drawn against him.

Keeping in view the recovery of huge quantity of opium coupled with the communication dated 15.06.2015 sent by the Zonal

Officer to the Superintendent of Police, Sirsa sufficiently indicates that the petitioner has been operating with active connivance of the police. Accordingly, this Court feels that in case the petitioner is allowed bail the possibility of his misusing the order of bail cannot be ruled out. Consequently, the bail application is dismissed.

However, nothing expressed hereinabove shall be construed as an expression of opinion by this Court on the merits of the case.

27.05.2016
sumit

(JITENDRA CHAUHAN)
JUDGE