

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

CRM-M-25131-2020(O&M)

Date of decision:-26.10.2020

Lakhwinder Singh @ Lakha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Raj Kumar Gupta, Advocate
for the petitioner.

Mr.Luvinder Sofat, AAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This third petition for regular bail has been filed by petitioner – Lakhwinder Singh @ Lakha, aged about 23 years – an accused in FIR No.162 dated 17.10.2018 for the offence under Section 21 of NDPS Act, registered with Police Station City, Kotkapura.

In nutshell, the prosecution story is that on 17.10.2018 at

about 6:40 p.m., a police party from Police Station City, Kotkapura while being present in the area of culvert over canal minor, Bajakhana Road, Kotkapura having laid a picket there, during the course of checking of vehicles intercepted a Swift Dezire car, white in colour having registration No.PB-04P-0396 coming Bajakhana side. The car was being driven by one Ajay Kumar alias Ajju, whereas present petitioner Lakhwinder Singh @ Lakha son of Jagtar Singh, resident of near Wood-weigh, Prem Nagar, Kotkapura was found to be sitting on the front seat and Shivpreet Singh @ Sonu and Ramandeep Singh were sitting on the rear seat. Suspecting that contraband was being carried in the car, DSP(D), Faridkot was summoned to the spot and then in his presence, the car was searched as per law. From the dash board, one polythene having heroin was recovered, which on being weighed came out to 255 gms. After drawing sample, the residue heroin was seized. The accused were arrested in this case. Formal FIR was got registered. The investigation in the case started. The present petitioner had filed a petition for regular bail before Judge, Special Court, Faridkot, which was however dismissed on 23.1.2019. Thereafter, the petitioner had filed a petition for regular bail before this Court bearing CRM-M-15396-2019, which was however withdrawn by learned counsel for the petitioner by making statement on 9.7.2019. After that, the petitioner had approached this Court again by way of filing CRM-M-46909-2019, which was dismissed observing that since the contraband recovered amounts to commercial quantity attracting the rigors of Section 37 of the NDPS Act, the Concession of regular bail could not be granted. Now for the third time, the petitioner/accused has knocked at the door of

this Court by way of filing the present, which is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the record.

The main argument of learned counsel for the petitioner has been that according to the prosecution story 255 gms. of heroin wrapped in the polythene bag had been recovered and if weight of the polythene is deducted, then the contraband recovered could be less than 250 gms. i.e. less than commercial quantity and bar of Section 37 of the NDPS Act does not come into play. He has further argued that for the said reason regular bail has been granted to co-accused namely Shivpreet Singh @ Sonu by a Co-ordinate Bench in CRM-M-15208-2019 vide order dated 22.10.2019, copy of order being Annexure P2 and co-accused Ramandeep Singh in CRM-M-15529-2020 vide order dated 14.8.2020, copy of order being Annexure P3 and as such, the petitioner, who is similarly placed is entitled to that very concession on the ground of parity.

Whereas, the petition is being vehemently opposed by the State counsel contending that the earlier petition for regular bail filed by the petitioner having been dismissed on merits on account of bar of Section 37 of the Act, there has not been any change in circumstances, since then which might have given rise to any occasion to the petitioner to approach the Court again seeking regular bail. He has further contended that Section 37 of the Act had not been brought to the notice of learned Benches while orders Annexures P2 and P3 were passed. Therefore, the petitioner cannot take advantage of such orders and claim parity for

seeking regular bail. Learned State counsel has further submitted that the petitioner is involved in two other cases under NDPS Act and out of those case, one case is pending trial, whereas in other case, he had been discharged. In that way, the petitioner is a habitual offender and in case he is released on bail, there is every likelihood of his indulging in drug peddling again and trying to tamper with the prosecution evidence and to abscond even.

After hearing the rival contentions, I find that no ground to accept the petition in hand is made out.

Firstly, the petitioner had approached this Court on two earlier occasions. One petition was withdrawn on his behalf, whereas the second petition had been decided on merits, copies of orders being Annexure P6 and Annexure P7. There has not been any change in circumstances ever since the dismissal of such petition on merits.

Secondly, with regard to the argument of learned counsel for the petitioner that the weight of contraband with polythene was 255 gms. and if the polythene and heroin are weighed separately then recovered contraband would come out to be less than 250 gms. falling under category of non-commercial quantity, this contention does not convince me. It has not been explained as to how after deducting weight of the polythene, the weight of the recovered heroin would be less than 250 gms and from where it would be inferred that the weight of the polythene was 6 gms. or more. Normally, the polythene used for wrapping does not have that much weight. Merely on the basis of presumptions and suppositions weight of polythene cannot be taken to be so in order to bring the

recovery under category of non-commercial quantity and to further say that even the weight of polythene is taken, the recovery is marginally more than commercial quantity. Bar of Section 37 of the Act cannot be avoided in such a manner. The legislature had enacted the Act with the purpose of controlling and minimizing drug peddling. The provision of Section 37 of the Act was introduced as a deterrent to the drug peddlers.

For ready reference, Section 37 of NDPS Act reads as under:

Offences to be cognizable and non-bailable.—(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(iii)(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the

Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

This provision cannot be ignored and deviated from for any other consideration like long incarceration of the petitioner or quantity being marginally more than commercial quantity or antecedents of the petitioner etc. The Apex Court has also observed so in various judgments. Two of the judgments can be referred to here as **Union of India Versus Rattan Mallik @ Habul, 2009(1) RCR(Criminal)938** and **State of Kerala etc. Versus Rajesh etc.**, arising out of SLP(Crl.)No(s).73097312 of 2019.

A perusal of the orders passed by the Co-ordinate Benches granting regular bail to the co-accused of the present petitioner goes to show that Section 37 of the Act was not brought to their notice.

This provision does not apply to recoveries amounting to small quantity and non-commercial quantity. A person, who is found in possession of contraband amounting to small quantity may be a drug addict himself and the recovered contraband could be for self consumption but it is not so in the case of recoveries involving commercial quantity because that could never be presumed for self consumption, rather meant for supply to other drug addicts for profit and other monetary gains. The drug peddlers play with lives of young men and women by introducing them to drugs for small time excitement/kick and after a short time, such persons become addicts and cannot live without drugs. This is posing a serious threat to the society and drug peddlers are required to be dealt with firmly and sternly because any misplaced sympathy for them in granting bails to them liberally would result in

increased drug trafficking exposing more people to this menace, creating turmoils and unrest in the society.

In the instant case I do not see any reason to record satisfaction that there are reasonable ground to believe that the petitioner is not guilty of offence under Section 21 of the Act and that he is not likely to commit any offence while on bail.

Thirdly, the petitioner cannot claim the similar benefit as granted to co-accused pleading parity since the Court granting the bail has to keep various factors into consideration like role played by each of the accused in the incident, the past criminal record of each accused, the control, which could be exercised over each accused so as to ensure appearance of accused in the Court regularly, chances of the accused trying to threaten the prosecution witnesses or influencing them, chances of the accused absconding from the proceedings etc.

Fourthly, the petitioner comes out to be in habit of committing crime since as it comes out from the perusal of custody certificate filed by the State counsel, besides the present case the petitioner is involved in another case under NDPS Act, where he is facing trial. He was booked in one more case under NDPS Act though in the said case he is shown to have been discharged.

Fifthly, the apprehension expressed by the State counsel that if released on bail, there is likelihood of the petitioner trying to tamper with the prosecution evidence and to abscond even, cannot be brushed aside in a light manner.

Lastly, as informed by the State counsel, the trial is at the

advanced stage of defence evidence and for arguments fixed for 28.10.2020. The proceedings are likely to be concluded on that date or shortly thereafter. For that reason also, no ground is made out to grant regular bail to the petitioner during the pendency of the trial.

In view of the abovesaid discussion, the petition is doomed for failure and is dismissed accordingly.

26.10.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No