

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

216-2

CRM-M No.1383 of 2020
Date of decision:14.09.2021

Gurlal Singh @ Gora Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. S.S. Brar, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab.

SUVIR SEHGAL J. (ORAL)

This is the first petition filed by the petitioner under Section 439 of Cr.P.C. for grant of regular bail in case FIR No.214 dated 25.09.2019 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short - "the NDPS Act") at Police Station Lambi, District Shri Muktsar Sahib.

As per the case of the prosecution, two persons in the area of *Bazigar Basti* of village Hakuwala, who identified themselves as Lakhwinder Singh @ Lakha and Gora Singh (present petitioner) were intercepted by the police and 196 strips containing 10 tablets each of Tramadol Hydrochloride were recovered from them. Both the accused were taken in custody on the spot.

Counsel for the petitioner submits that the petitioner has been falsely framed. As per him, the story as set up in the FIR is highly improbable and the petitioner has no relation with the co-accused

Lakhwinder Singh @ Lakha. He urges that neither any independent witness was made to join at the time of search and seizure nor any attempt was made to do so. It is his argument that no offer to get search conducted before a Gazetted Officer was made and there is a violation of mandatory provision of Section 50 of the NDPS Act. Still further, he submits that sample was not drawn. Counsel asserts that the petitioner, who has clean antecedents, is no longer required for custodial interrogation as investigation is complete, challan has been presented and the trial is not progressing.

Per contra, learned State counsel upon instructions from ASI Sukhwinder Singh, has opposed the petition on the ground that the total weight of contraband recovered from the petitioner works out to 804 grams, which falls within the ambit of commercial quantity as per the notification issued under the provisions of the NDPS Act and the bar as contained in Section 37(1)(b) of the NDPS Act is attracted. Though, custody certificate of the petitioner has not been filed, yet on specific instructions from the Investigating Officer, he has admitted the fact that the petitioner has clean antecedents. Upon further instructions, he submits that challan has been presented on 23.03.2020, charge has been framed on 08.03.2021, but none out of 13 prosecution witnesses have been examined.

I have considered the rival submissions of the counsel for the parties.

Hon'ble Supreme Court in Union of India versus K.A. Najeeb 2021 (2) RCR (Criminal) 145 has held that once timely

conclusion of the trial is not possible, the Court is obligated to release the accused on bail.

Keeping in view the fact that the petitioner has suffered incarceration for almost two years and the trial is at its very initial stage, this Court is prima facie of the view that the petitioner deserves to be released on bail, during the pendency of the trial.

Without commenting upon the merits or de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate.

It is clarified that any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

14.09.2021
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No