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

Decided on: 13.12.2021

1. CRM-M No.8789 of 2021 (O&M)

Lalta Prasad

....Petitioner

Versus

State of Haryana

....Respondent

2. CRM-M No.45603 of 2021 (O&M)

Rahul Kumar Maurya

....Petitioner

Versus

Narcotics Control Bureau

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Pankaj Bali, Advocate
for the petitioner (in CRM-M-8789-2021)

Mr. Yashveer Kharb, Advocate
for the petitioner (in CRM-M-45603-2021)

Mr. Himmat Singh, DAG, Haryana.

Mr. Rajiv Sharma, Advocate
for the respondent – NCB.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in these petitions is for grant of regular bail to the petitioners namely Lalta Prasad and Rahul Kumar Maurya under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in Crime No.VIII/35/DZU/2020 under Sections 8, 18-C and 29 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS

Act') registered at Narcotics Control Bureau vide criminal complaint dated 06.01.2021.

Counsel for the petitioners have argued that as per the allegations in the complaint filed by NCB, on 20.07.2020, a secret information was received that both the petitioner are carrying narcotic drugs and are coming through Sonapat Highway in car bearing registration No.DL1R-TA-4239. Thereafter, by giving an information to the Intelligence Officer of NCB, a team was constituted and the car was intercepted on 21.07.2021 at 02:30 Hrs at Panipat Toll Plaza. On stopping the car, the driver of the car introduced himself as co-accused Umesh Rajput whereas the petitioner sitting on the co-driver seat of the car informed his name as Lalta Parsad and the person sitting on the rear seat of the car told his name as Rahul Maurya. Thereafter, a notice under Section 50 of the NDPS Act was served giving them option to be searched before the Gazetted Officer or the Magistrate, on which all the 03 accused gave their consent that they can be searched by the NCB Officer. Thereafter, the same team of the NCB searched the said vehicle and from the roof ceiling of the car, above the seat of the driver, 02 transparent polythene bags containing some black substance were recovered and the accused told that it is opium, which they are taking to District Kaithal. Thereafter, the said substance was checked which was found to be 04 Kgs and 02 samples were drawn and the remaining bulk sample was also sealed and on completing the formalities, notice were given to all the accused under Section 67 of the NDPS Act for recording their statements. In response to the notice, the petitioner Rahul Kumar stated that he is known to the other 02 accused and they

are jointly bringing the opium in the car belonging to Umesh Rajput. Similar is the statement made by the petitioner – Lalta Parsad.

Counsel for the petitioners have further submitted that the petitioners were arrested on 21.07.2020 and their consent was taken that the search can be conducted by an NCB Officer, who was part of the team which has given the notice and therefore, it will be a debatable issue to be decided during the course of trial, whether Section 50 of the NDPS Act was properly complied with or not. It is also submitted that the complaint was filed after about 05 months i.e. on 06.01.2021, after completing the investigation, however, in the complaint nothing is stated about the source of acquiring the contraband by the accused persons.

Counsel for the petitioners have further argued that though, in the complaint, the details of the mobile phone taken from the concerned Nodal Officer is given, however, nothing is stated in the complaint that the petitioners prior to their start of journey were in touch, with each other.

Counsel for the petitioners have also submitted that in fact, both the petitioners have taken the car of co-accused Umesh Rajput on rent for the purpose of traveling as he belongs to the same village and they were not aware about the activities of the co-accused. It is further argued that the only evidence against the petitioners is their own disclosure statements, which in view of judgment of the Hon'ble Supreme Court in *“Tofan Singh vs State of Tamil Nadu”, 2013(4) RCR (Criminal) 631*, is yet to be proved and to be seen by the trial Court, whether it is admissible in evidence or not. Lastly, it is submitted

that both the petitioners are the first offenders and they are not involved in any other case.

Reply by way of affidavit of the Investigating Officer along with the Custody Certificate, is on record.

Counsel appearing for the respondent – NCB has argued that the fact that all the 03 accused belong to the same village show that they were jointly bringing opium and had knowledge about the same. It is further submitted that both the petitioners were named in the secret information by giving the car number, which was owned and driven by Umesh Rajput (though he was not named in the secret information). It is further submitted that a proper procedure has been followed while arresting the accused and conducting the search and then by giving a notice under Section 67 of the NDPS Act, their disclosure statement was recorded. It is also argued that during the investigation, it has come that Umesh Rajput (co-accused), was the owner and driver of the car and the contraband was recovered from the ceiling of the car above the head of the driver, which was driven by Umesh Rajput, however, it is not disputed on the basis of the Custody Certificate that both the petitioners are not involved in any other case.

A perusal of the Custody Certificate would show that the petitioner – Lalta Parsad as well as Rahul Kumar are in custody for the last 01 year, 04 months and 19 days.

At this stage, counsel for the petitioner has also submitted that the next date, fixed before the trial Court, is 04.01.2022 for recording the prosecution evidence, however, no PW has been examined so far as the trial was delayed due to COVID-19 situation.

After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioners are not involved in any other case; they are in custody for the last 01 year, 04 months and 19 days; challan stands presented; no PW has been examined so far and conclusion of the trial is likely to take some time, the present petitions are allowed and the petitioners namely Lalta Prasad and Rahul Kumar Maurya are directed to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioners, in case they are found involved in any other case or misusing the concession of bail, in any manner.

A photocopy of this order be placed on the file of other connected case.

(ARVIND SINGH SANGWAN)
JUDGE

13.12.2021

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Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No