

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

DECIDED ON: 30th November, 2021

(1) CRM-M-19175 of 2021

Kewal Singh

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

(2) CRM-M-32103 of 2021

Gurwinder Singh @ Kala

.....PETITIONER

VERSUS

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Lakhwinder Singh, Advocate for petitioner (Kewal Singh).

**Mr. Kuldeep V. Singh Ahluwalia, Advocate
for petitioner (Gurwinder Singh @ Kala)**

Mr. Amit Mehta, Sr. DAG Punjab.

AVNEESH JHINGAN, J (ORAL)

Due to COVID-19 situation, the Court is convened through video conference.

These two petitions are filed under Section 439 Cr.P.C. for grant of regular bail in case of FIR No. 21 of 2020 dated 2.3.2020, under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') registered at Police Station Jaurkian, District Mansa.

As per the case set up by the prosecution, on 2.3.2020 the police party during routine patrolling at about 11:45 p.m. stopped the motor cycle bearing registration No.PB-31-C-0509. The motor cycle was driven by Kewal Singh and pillion rider was Gurwinder Singh @ Kala (petitioners).

From a polythene bag tied on the handle of the motor cycle 380 tablets of **Op. pamadol** were recovered.

Learned counsel for the petitioner-Kewal Singh argues that the petitioner is in custody for last nine months. There is non-compliance of Section 50 of the Act. Recovery was not from the conscious possession of Kewal Singh but from the handle of the motor cycle.

Learned counsel for the petitioner-Gurwinder Singh @ Kala contends that motor cycle was owned by Kewal Singh and the petitioner was the pillion rider. He relies upon the Annexure P-4 that Panchayat had verified the fact that the petitioner is an agriculturist. He relies upon Annexure P3, marriage card of the daughter of the petitioner to submit that the petitioner had taken lift as his vehicle had developed a mechanical fault. Reliance is placed upon decision of the Supreme Court in *Sujit Tiwari Versus State of Gujarat and another, Criminal Appeal No. 1897 of 2019 decided on 28.1.2020*.

Learned State counsel opposes the prayer for grant of bail. He relies upon Section 37 of the Act. He further submits that the charges have been framed and there are total nine prosecution witnesses, all of them are official witnesses. He on instructions submits that the next date fixed before the trial court is 17.12.2021 and an earnest effort would be made to conclude the prosecution evidence within three months from the next date fixed.

Recovery in the present case is of commercial quantity. Applicability of Section 50 of the Act in facts of the present case and its compliance would be subject matter of trial. The contention that the petitioner had taken lift as his vehicle had developed mechanical fault and reliance on the marriage card of daughter of petitioner is of no avail, *suffice-to-say* that in the marriage card the programme is of 9.2.2021 whereas the checking was done on 2.3.2020.

The decision of the Supreme Court case in **Sujit Tiwari's case (supra)** does not enhance case of petitioner. The decision is distinguishable on facts.

Supreme Court in ***Union of India through Narcotics Control Bureau, Lucknow Versus Md. Nawaz Khan, 2021 AIR (Supreme Court) 4476***, held that merely no contraband was recovered from personal search, in itself cannot be ground for grant of bail.

Considering that the contention raised regarding compliance of Section 50 is debatable, the recovery is of commercial quantity. The custody period itself cannot be a ground for grant of bail. There is no undue delay in the trial. Rather a statement is made that the prosecution evidence would be concluded within three months.

No ground is made out for grant of bail.

Dismissed.

However, it is clarified that nothing stated hereinabove shall be construed as an observation on the merits of the case.

No doubt, in case a request is made before the trial Court for accommodating dates for an early conclusion of prosecution evidence, the same would be considered in accordance with law.

Photocopy of this order be placed on the file of connected case.

30th November, 2021

reema

**(AVNEESH JHINGAN)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>