

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

(I)	CRM-M-4808-2022 (O&M)	
	Vishu Kumar @ Vishal Kumar	...Petitioner
	Versus	
	State of Punjab	...Respondent
(II)	CRM-M-10313-2022 (O&M)	
	Harish Gupta @ Kala	...Petitioner
	Versus	
	State of Punjab	...Respondent

Date of Decision: 22.04.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Jagraj Singh Khiva, Advocate, for the petitioner
in CRM-M-4808-2022.

Mr. J.S.Sandhu, Advocate, for the petitioner
in CRM-M-10313-2022.

Mr. Luvinder Sofat, AAG, Punjab.

GURVINDER SINGH GILL, J. (Oral)

1. This order shall dispose of aforesaid two petitions filed on behalf of Vishu Kumar @ Vishal Kumar and Harish Gupta @ Kala seeking grant of regular bail in respect of a case registered against them vide FIR No.81 dated 31.07.2021 at Police Station Maur District Bathinda, under Section 22-C of the NDPS Act.
2. The allegations against the petitioners in nutshell are that on 31.07.2021, they were found in possession of 3450 tablets i.e. 1000 tablets of Radol-100 and 2450 tablets of Tramwel SR-100 (containing Tramadol

Hydrochloride), which they were carrying in a 'transparent' polythene bag, when they were sitting in a car, which was in stationery mode on the road side and were frisking the said polythene bag.

3. Learned counsel for the petitioners have submitted that they have falsely been implicated in the present case and that it is highly unlikely that they would be carrying the contraband in a 'transparent' polythene bag while sitting in a parked car, as carrying the same could easily expose them to detection and render them liable for commission of offence.
4. Opposing the petition, learned State counsel has submitted that since they were apprehended at the spot alongwith the contraband, their complicity is clearly evident. Learned State counsel has, however, informed that both the petitioners as on date have been behind bars since the last about 8 ½ months. Learned State counsel has also informed that as on date 2 PWs out of cited 13 PWs have been examined. It has also been informed that while petitioner – Harish Gupta is not involved in any other case, petitioner – Vishu Kumar @ Vishal Kumar has been involved in one more case.
5. At this stage, learned counsel representing petitioner – Vishu Kumar has clarified that though he was involved in one more case i.e. FIR No.58 dated 27.05.2015, but he stands acquitted in the said case vide judgment dated 27.01.2020.
6. I have considered rival submissions addressed before this Court.
7. It is not in dispute that the recovery in the present case was effected from a 'transparent' polythene bag, which the petitioners were stated to be

carrying and frisking while sitting in a car, which was in a stationery mode. It is highly unlikely that accused would be carrying contraband in a 'transparent' polythene bag as the same would be suicidal for any drug trafficker particularly in a public place. The contention raised on behalf of the petitioners regarding improbability of the prosecution version on this count, cannot be brushed aside lightly. Any drug trafficker would take utmost care and caution while carrying a drug so as to rule out the possibility of detection. He would make every effort to carry the contraband in a concealed manner as public display of the same would lead to his detection and consequently he could be charged for commission of an offence inviting extremely harsh sentence. As such, the story that accused were carrying contraband in a 'transparent' polythene bag from which it could be seen is highly improbable and is doubtful. In this context, a reference may be made to judgment passed by this Court in CRM-M-8026 of 2020 titled in Lakhwinder Singh @ Lakha Vs. State of Punjab as well as in CRM-M-20019 of 2020 titled as Gurwinder Singh @ Binder Singh Vs. State of Punjab.

8. Having regard to the aforestated position, involvement of the petitioners is rendered doubtful. In any case, the petitioners have been behind bars for a substantial period of about 8 ½ months and only 2 PWs out of cited 13 PWs have been examined so far. Though petitioner Vishu Kumar is stated to be involved in one more case, but he stands acquitted vide judgment dated 27.01.2020 as has been clarified by learned counsel for the petitioner. In these circumstances, further detention of the petitioners

- will not serve any useful purpose. The petitions, as such, are accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
9. It is however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.
10. A photocopy of this order be placed on the connected file.

22.04.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**