

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

CRM-M-54189-2019 (O&M)

(1) Buta Singh ...Petitioner
Versus
State of Punjab ...Respondent

(2) CRM-M-64-2020 (O&M)
Resham Singh ...Petitioner
Versus
State of Punjab ...Respondent

Date of Decision:- 11.1.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. P.K.S. Phoolka, Advocate for the petitioner(s).

Mr. Ajay Pal Singh Gill, DAG, Punjab
assisted by ASI Mehnga Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. This order shall dispose off the above mentioned two petitions filed on behalf of Buta Singh and Resham Singh seeking grant of regular bail in a case registered vide FIR No. 44 dated 20.7.2019 under Sections 22, 25 and 29 of the NDPS Act, 1985 at Police Station Nandgarh, District Bathinda.
2. The allegations, as levelled in the FIR, are to the effect that on 20.7.2019, when a police party had raised barricading on the bridge of a drainage canal on the road leading from Firadkot Kotli to village Kaljharani, for the

purpose of checking, then two persons were seen coming from village Firadkot Kotli on motorcycle, who upon noticing the police party got confused and tried to turn back their motorcycle but in the said process the motorcycle slipped and they fell down on a *katcha* portion of the road and a plastic bag which was lying between both the riders of the motorcycle fell on ground out of which strips of intoxicating tablets fell on *katcha* ground. The said persons were apprehended by the police. While the driver disclosed his name as Resham Singh, the pillion rider disclosed his name as Buta Singh. The strips of tablets which had fallen on ground were picked up and put in the same plastic bag and upon counting the same, it was found that there were 154 strips of intoxicating tablets of Tramadol Hydrochloride 100 MG with each strip containing 10 tablets i.e. a total of 1540 tablets. Buta Singh and Resham Singh could not produce any licence or any permit to justify possession of the said tablets.

3. The learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in the present case and that the entire recovery proceedings stands vitiated as no offer in terms of Section 50 of the NDPS Act was ever extended to them. It has further been submitted that the petitioners cannot be attributed any conscious possession of the contraband since the same was recovered from a bag lying on the ground. It has also been submitted that since no independent witness was associated at the time of recovery, no sanctity can be attached to the alleged recovery of contraband.
4. Opposing the petition, the learned State counsel has submitted that it is a case of chance recovery from a bag which had fallen down on ground and as

such, there is no question of compliance of provisions of Section 50 of the Act or for association of any independent witness. It has also been informed that both the petitioners have been in custody since the last more than 2 years and 5 months and that while Buta Singh stands involved in one more case, there is no other case pending against Resham Singh.

5. I have considered rival submissions addressed before this Court.
6. The contention as regards non-joining of an independent witness cannot be said to entitle the petitioners to grant of bail as there is no hard and fast rule that an independent witness is required to be associated in every case. It is a rule of prudence only and not an absolute rule that the recovery must be witnessed by an independent person. The contentions as regards the search not having been effected by a gazetted officer or a Magistrate will not hold ground inasmuch as it is a case of a chance recovery and that too from a bag which had fallen down on ground from the motorcycle and cannot be said to be a case of recovery pursuant to personal search of the accused.
7. As far as the contention regarding the petitioners not being in conscious possession of the contraband is concerned, it is a case where both the petitioners were carrying the bag containing contraband on their motorcycle which was lying in between them. In these circumstances, the petitioners cannot feign ignorance about the contents of the bag being carried by them on the motorcycle, which ultimately was found to contain intoxicating tablets i.e. Tramadol Hydrochloride for which the petitioners could not produce any permit or licence to justify their possession.

8. Even otherwise, the recovered quantity of contraband which falls in the category of ‘commercial quantity’ would attract fetters imposed by Section 37 of the Act in the matter for grant of bail. Hon’ble Apex Court in a recent judgment i.e. 2020(1) RCR(Criminal) 818 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioners are not guilty of the offence in question. As such, no case is made out for grant of bail to the petitioners. The petitions are sans merit and are hereby dismissed.
9. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.
10. A photocopy of this order be placed on the file of connected case(s).

11.1.2022

kamal

(Gurvinder Singh Gill)
JudgeWhether speaking /reasoned
Whether ReportableYes / No
Yes / No