

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

214

CRM-M 752 of 2023
Date of pronouncement: 21.03.2023.

Ram Lakhan

.....*Petitioner*

Versus

State of Punjab

.....*Respondent*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Ashok Giri, Advocate for the petitioner.

Ms. Himani Arora, AAG, Punjab.

GURBIR SINGH, J

Prayer in this petition is for grant of regular bail in case FIR No.121 dated 28.07.2022, under Sections 18/29 of NDPS Act, 1985 registered at Police Station Lalru, District SAS Nagar, Mohali.

As per allegation in the FIR, police party was manning a Naqa and was conducting the checking of vehicles. At about 2.15 PM, two young boys who were empty handed jumped at 100 meter short of nakabandi from moving Haryana Roadways Bus coming from Ambala side and ran towards back side. On suspicion, they were apprehended. On asking, one boy disclosed his name as Arif and other disclosed his name as Ram Lakhan-petitioner. Their search were conducted as per rules. On search of Arif (non-petitioner), opium kept in plastic polythene wrapped on waist with the help of tape under the shirt worn by him was recovered. On weightment, abovesaid recovered opium was found to be 1 kg 300 grams including polythene bag. On search of Ram Lakhan-petitioner, opium kept in the

polythene bag wrapped on waist with the help of tape was recovered. On weightment, the same was found to be 1 kg 300 grams including polythene bag and the same were taken into possession as per rules.

Learned counsel for the petitioner has argued that the alleged recovery of opium in possession of the petitioner is not of commercial quantity. Opium recovered from both the accused cannot be clubbed together. Petitioner is in custody since 28.07.2022 i.e. from the date of his arrest. The petitioner has already undergone more than 7½ months of custody. The completion of trial will take a long time. He also relies on judgment passed by the Co-ordinate Bench of this Court in 'CRM-M-26023-2022 dated 01.09.2022 titled as Pawan Kumar Vs. State of Punjab'.

Custody certificate as well as Status report by way of affidavit of Darpan Ahluwalia, IPS, Asst. Superintendent of Police, Sub-Division, Dera Bassi Tehsil Derabassi, District SAS Nagar, Mohali, on behalf of respondent-State, filed in Court today. The same are taken on record.

On the other hand, the prayer is opposed by learned State counsel. She submits that both Ram Lakhan-petitioner and Arif-non petitioner belong to the same Village Majhgawan, P.S. Bisarhat Ganj, Tehsil Amla, District Bareilly UP. They were travelling together in a bus. During interrogation, they made disclosure statements that they had brought the opium from Jharkhand and they were going to deliver the said opium to one Mussa, resident of Ferozepur, who was named in the present case. In the instant case, the recovery of opium from both the accused is required to be clubbed together, since they were known to one another and travelling together to deliver opium to one person. Challan in this case has already been presented and charge is framed.

Heard.

The petitioner and co-accused are resident of the same village. The recovery is effected in the areas of SAS Nagar, Mohali, a far away place from their native village. They both were travelling together in the bus. No doubt, they were carrying opium wrapped on their respective waists with the help of tape, so recovery of opium attributed to each of the accused cannot be joined together to examine whether same is of commercial or non-commercial quantity. I am in respectful agreement with the case law cited as Pawan Kumars's case (supra) by learned counsel for the petitioner, wherein it is held that recovery from the petitioner is only to be considered to examine as to whether same is of commercial or non-commercial nature at the time of deciding the bail application. But Court cannot shut its eyes that menace of drugs in Punjab is eating the social, economic and basic fabric of the society. Any clever person, on such technicalities can take the law for granted. The petitioner and co-petitioner are so clever that in order to avoid the strict provisions of law they were carrying contraband in such a manner that the same fall under the non-commercial quantity. They were to deliver opium to same person. The recovery of opium from petitioner is not marginally higher than the small quantity. So, under such circumstances, petitioner is not entitled for bail at this stage.

Accordingly, the present petition is dismissed.

21.03.2023
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No