

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

Neutral Citation No. 2023:PHHC:042457
CRM-M-7552-2023
Date of Decision: March 22, 2023

Lakhveer Singh @ Lakha

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Piyush Aggarwal, Advocate for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition is for grant of regular bail in case FIR No.0059, dated 05.04.2022, registered at Police Station Sadar Faridkot, District Faridkot, under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

As per prosecution allegations, 150 strips each containing 10 intoxicant tablets i.e. total 1500 intoxicant tablets of Tramadol Hydrochloride were recovered from the conscious possession of the petitioner on 05.04.2022, which were taken into possession after making compliance of the necessary provision of law. In his disclosure statement, petitioner nominated one Harjeet Singh on which basis, Section 29 of the NDPS Act was also added. It is submitted by learned counsel for the petitioner that recovery is shown to have been effected from a transparent polythene allegedly hanging from the motorcycle being driven by the petitioner.

Learned counsel for the petitioner has referred to the case of ***“Khushkaran Singh @ Khushi v State of Punjab”*** (CRM-M-45237-2022, decided on 19.12.2022) by a co-ordinate Bench of this Court to contend that it is not possible to believe that a person, who has to commit

an offence with regard to contraband would carry the same in a transparent polythene bag. It is further contended that recovery was effected from the polythene bag, which had fallen on the ground and so it is to be established during the trial as to whether the recovery was from the conscious possession of the petitioner. For this, learned counsel has placed reliance upon “***Balwinder Singh v State of Punjab***” (CRM-M-16150-2021) decided by a co-ordinate Bench of this Court on 19.07.2021. It is further pointed out that co-accused Harjeet Singh has already been allowed bail by this Court, vide order dated 22.02.2023 in CRM-M-50728-2022.

Learned State counsel has placed on record the custody certificate of the petitioner, revealing that petitioner is in custody for the last 11 months and 17 days in this case and has no criminal antecedent. However, bail petition has been opposed on the ground that commercial quantity of the contraband was recovered and that Section 37 of the NDPS Act bars the grant of bail in such circumstances.

As per reply filed by the State, the transparent polythene bag was hanging at the handle of the motorcycle being driven by the petitioner and when he was asked to stop, the motorcycle fell down and the tablets kept in the transparent polythene bag tied to the handle of the motorcycle scattered. It has been observed in ***Khushkaran Singh @ Khushi's*** case (*supra*) that when recovery of commercial quantity of contraband is shown to have been effected from a transparent polythene bag, the same made the case of prosecution doubtful as it was highly unlikely that a person committing offence with respect to contraband would carry the contraband in a transparent bag. Reliance was placed

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upon another judgment of a co-ordinate Bench rendered in “*Banti Kaur @ Bhanti Kaur v State of Punjab*, CRM-M-4408-2021, decided on 02.08.2021; “*Jaskaran Singh @ Jassu v State of Punjab*, 2021(3) RCR (Criminal) 360 and “*Lakhwinder Singh @ Lakha v State of Punjab*” 2021(2) RCR (Criminal) 837.

Having regard to the aforesaid facts and circumstances, the fact that petitioner has no criminal antecedent and co-accused has already been allowed bail, but without commenting anything upon the merits of the case, the petitioner is admitted to bail and he is ordered to be released on bail on his furnishing personal bonds and surety bonds to the satisfaction of learned Trial Court/Chief Judicial Magistrate.

Allowed.

March 22, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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