

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

CRM-M-53356-2021

Date of Decision: 29.04.2023

Lakhwinder Singh @ Lakha

..... Petitioner

Versus

State of Punjab

.....Respondent

CRM-M-7819-2021

Jatinder Kumar

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. F.S. Virk, Advocate and
Mr. Rakesh Gupta, Advocate, for the petitioners.
Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

This order will dispose of above-mentioned petitions, as both have arisen out of a common FIR.

Prayer in the present petitions is for the grant of regular bail to the petitioners in a case FIR No.333 dated 16.10.2020, registered under Section 22 of Narcotic Drugs & Psychotropic Substance Act, 1985, at Police Station Tripuri, Patiala.

As per facts of the case, the Police party during search stopped two young men coming on motorcycle bearing registration number PB11CT2696. After seeing the police, they felt nervous and tried to turn back immediately, however, with the help of companions, complainant ASI Lakhvir Singh apprehended them on the spot. On asking, one who was driving the motorcycle disclosed his name Jatinder Kumar (petitioner) son

of Darbari Lal, whereas, the pillion rider disclosed his name as Lakhwinder Singh @ Lakha (petitioner) son of S. Jaswant Singh. The police party found a bag being carried by them, which was placed in between the seat of the motorcycle. On suspicion, they were given offer of search under Section 50 of the NDPS Act, however, they deposed confidence in the complainant and thus search was conducted. On searching the bag, the police found a bag containing 700 loose intoxicating capsules of blue colour and 1900 intoxicating capsules of maroon colour. Both the petitioners failed to produce any licence for possession of the report. Hence, FIR was registered for the offence under Sections 22/61/85 of NPDS Act. Samples taken were sent to the FSL and on the receipt of the same, the same was found to be containing salt Tramadol Hydrochloride. Weight of 700 capsules was found to be 609 mg and that of 1900 capsules was found to be 598 mg, which falls under the commercial category. As the petitioners were arrested on the spot, they approached the Court of learned Additional Sessions Judge, Patiala, praying for grant of bail and who after hearing both the sides declined the same vide order dated 05.01.2021. Aggrieved by the same, the petitioners have approached this Court praying for grant of bail by way of filing the present petitions.

It has been vehemently contended by learned counsel for the petitioners that the petitioners have been falsely implicated in this case. They have submitted that recovery has been planted by the police on the petitioners and there was no compliance of Section 50 NDPS Act. They submit that conscious possession of the alleged contraband is also not proved. They submit that recovery is from a public place and the police party has not joined any independent witness, which would show the false

implication of the petitioners. It is submitted that the petitioners are behind bars since the date of their arrest and they have almost completed custody of more than two years. It is further submitted that Lakhwinder Singh @ Lakha was prosecuted in one more case, but he has already undergone the sentence awarded to him, so far Jatinder Kumar is concerned, he has been acquitted in a case for which he was prosecuted. They further submit that in the facts and circumstance, the petitioners deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioners and has submitted that both the petitioners were arrested on the spot and recovery was effected from them. It is submitted that accused Jatinder Kumar was driving the motorcycle, whereas, Lakhwinder Singh @ Lakha was a pillion rider and they were carrying a bag. He submits that though Section 50 of NDPS was not even attributed, but offer was given and on compliance of the same, recovery was effected. He submits that the petitioners are behind bars since the date of their arrest. He further submits that out of total 13 prosecution witnesses, 4 witnesses have been examined. He submits that the contraband recovered from the petitioners as per the FSL, falls under the commercial quantity, thus, the petitioner have no case for grant of bail.

Heard.

Evidently, the petitioners were arrested from the spot and recovery of contraband has been effected from them, which as per FSL report, was found to be containing Tramadol Hydrochloride and falls under the commercial quantity. However, this Court cannot ignore the fact that the petitioners are behind bars from the last more than two years. The prosecution has examined only four witnesses, out of total 13 prosecution

witnesses till date. As submitted before this Court, Lakhwinder Singh @ Lakha was prosecuted in one more case, but he has already undergone the sentence awarded to him in that case, whereas, Jatinder Kumar, was acquitted in a case for which he was prosecuted. Hon'ble Supreme Court in Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260 expressed its views as under:-

“19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21.....it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because

in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.”

The case of the petitioners is covered by the ratio of law laid down by Hon’ble Supreme Court in the above said case. The veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties before it. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioners, I am of the view that learned counsel for the petitioners have been able to make out a case for grant of regular bail to the petitioners. The trial would take sufficiently long time for its conclusion.

Accordingly, the present petitions are allowed and the petitioners are ordered to be released on bail to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

29.04.2023
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Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE
: Yes/No
: Yes/No