

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

I. CRM-M-11681-2024
2024:PHHC: 049195

PULKIT TOMAR PETITIONER

Vs.

STATE OF HARYANA RESPONDENT

II. CRM-M-6885-2024
2024:PHHC: 049197

RAM LAL PETITIONER

Vs.

STATE OF HARYANA RESPONDENT

Reserved on:08.04.2024
Pronounced on:10.04.2024

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Argued By:- Mr. Rahul Rathore, Advocate,
for the petitioner (in CRM-M-11681-2024)

Mr. Vinod Ghai, Sr. Advocate, with
Mr. Arnav Ghai, Advocate and
Ms. Kashish Sahni, Advocate,
for the petitioner (in CRM-M-6885-2024)

Mr. Sumit Jain, Additional AG, Haryana.

DEEPAK GUPTA, J.

In the two petitions tiled above, both filed under Section 439 CrPC, petitioners pray for their release on regular bail in case FIR No.221 dated 09.08.2023 under Section 21(c) and 29 of the Narcotics Drugs and Psychotropic Substances (Act N: 61 of 1985) [for short ‘the NDPS Act’] registered at Police Station Udyog Vihar, Gurugram.

2. Separate status reports in both the cases have been filed by way of affidavits dated 03.04.2024 of Shri Anil Kumar, Deputy Superintendent of

Police, Haryana State Narcotics Control Bureau, Gurugram Unit on behalf of the State of Haryana.

3.1 It is revealed that on 09.08.2023, the Security Investigation Officer of DHL Courier Company, during X-ray scan examination, noticed a box, suspected to be containing narcotic substance. Police was informed. Notice under Section 42 NDPS Act was prepared and the police team reached the DHL Courier Company, where Virender Singh, Security Investigation Officer of the company was present. Sh. Satish Kumar, ETO, the Gazetted Officer was called. On checking the box, one yellow colour bed sheet, two yellow coloured pillow covers along with some other articles were found and on checking the bedsheet, one polythene was found, which contained material looking like amphetamine. The weight of the same was found to be 512 grams.

3.2 All the articles and the contraband were taken into possession. Complainant produced one invoice, one WPX (worldwide parcel express), photocopy of Aadhar card of **Shashank Shrivastava**, the sender of the box. The name of the addressee on the box was mentioned as **Aviv Bekar** r/o Israel. FIR was registered. Necessary proceedings under Sections 55 & 57 of the NDPS Act were done. Inventory was got certified. On analysis of the recovered contraband from RFSL, Bhondsi, the same was found to be **Ketamine**, as per the report dated 16.11.2023 (Annexure R1).

3.3 During further investigation, CCTV footage was obtained from DHL courier company, Jaipur. On verification of the mobile number mentioned at booking of the parcel, same was found to be in the name of one Devraj. On joining the investigation, said Devraj disclosed that said mobile was being used by his son Akshay Raj. Akshay Raj, on joining the

investigation, disclosed that on 08.08.2023, he had given his mobile to **Jubair Hassan Khan** (co-accused), who had told him that his phone was damaged and he needed to send a parcel and so, said Jubair Hassan Khan had given his (Akshay Raj's mobile number) in the DHL courier company. Said Akshay Raj also disclosed that Jubair Hassan Khan had seen the OTP on the mobile and told the same to one **Shrikant Tripathi**, who had gone to the DHL courier company for booking of the parcel.

3.4 Notice was then issued to Shashank Srivastava, who got recorded his statement under Section 161 CrPC and told that his friend Jubair Hassan Khan had asked for his Aadhar card for opening an account in HDFC Bank and that he (Shashank Shrivastava) had sent the photocopy of his Aadhar card to Jubair Hassan Khan. Jubair Hassan Khan then used the Aadhar card for sending his parcel in his (Shashank Shrivastava's) name. He (Shashank Shrivastava) also told that Jubair Hassan Khan and Shrikant Tripathi had attempted to send the contraband through DHL courier company by using his name.

3.5 Accused Jubair Hassan Khan and Srikant Tripathi were arrested on 01.11.2023. On interrogation, they suffered disclosure statements (*Annexures R4 and R5 in CRM-M-11681-2024*). Both of them named accused **Ram Lal** (*petitioner in CRM-M-6885-2024*). Section 29 of the NDPS Act was added. Ram Lal was arrested on 03.11.2023. His disclosure statement was recorded. The mobile phone of said accused Ram Lal was taken into possession. The disclosure statement of Ram Lal revealed that he had friendly relations with **Pulkit Tomar** (*petitioner in CRM-M-11681-2024*), who was a drug supplier and that on demand of one **Mosico** (Israel citizen) for amphetamine, he (Ram Lal) had asked Pulkit Tomar to make the arrangement

of said drug. The contraband was arranged by Pulkit Tomar. Ram Lal also disclosed that he had made advance payment of ₹3,20,000/- in cash; ₹50,000/- through google pay and ₹30,000/- from the account of his friend to Pulkit Tomar.

3.6 Based upon the aforesaid disclosure statement, accused Pulkit Tomar was arrested on 25.11.2023. His disclosure statement was recorded. He got recovered ₹50,000/-. The mobile phone of petitioner-Ram Lal was sent to DITAC Lab, Gurugram for retrieval of the data. The report of the said lab is Annexure R2. Call Detail Records (CDR) and Customer Application Form (CAF) of the accused persons were obtained. Section 120B was added.

3.7 After completion of investigation, challan has been filed against accused-Ram Lal, Jubair Hassan Khan, Shrikant Tripathi and Pulkit Tomar. Charges have been framed on 02.03.2024 and matter is now fixed for 25.04.2024.

4. It is contended by ld. senior counsel appearing on behalf of **Ram Lal** (*petitioner in CRM-M-6885-2024*) that said petitioner has been falsely implicated on the basis of disclosure statement of co-accused Jubair Hassan Khan and Shrikant Tripathi, which are inadmissible; that no recovery has been effected from the petitioner. Ld. counsel further contends that petitioner has clean antecedents and is not involved in any other case. Further attention is drawn by ld. senior counsel towards the FSL report, annexed with the status report of the police, as per which it is the salt of Ketamine, which was found, and not amphetamine. Ld. counsel submits that commercial category for Ketamine starts from 500 gm and that recovered quantity of contraband from the courier company is marginally higher than the commercial quantity. Ld. counsel further submits that petitioner is in custody for the last 5 months; and

that having the long list of prosecution witnesses, trial is likely to take long time to conclude and so, he be granted bail.

5. On behalf of **Pulkit Tomar** (*petitioner in CRM-M-11681-2024*), it is contended by ld. counsel that he has been arrested simply on the basis of disclosure statement of co-accused-Ram Lal; that he is not involved in any other case; that he is in custody for the last more than four months; that nothing was recovered from him; that trial is likely to take long time to conclude and so, he be granted bail.

6. Ld. State Counsel opposed both the petitions. It is contended that recovered contraband falls in commercial category and that both the petitioners have been found to be involved in international smuggling of the said contraband by making attempt to smuggle the same to Israel.

7. Submissions considered.

8. Initially, the material as found on 09.08.2023, during scanning by DLH courier company, was suspected to be amphetamine weighing 512 gram, the commercial category of which starts from 50 gram. However, on analysis from the RFSL, the narcotic substance has been found to be Ketamine and the commercial category thereof starts from 500 gram.

9. It is not disputed that petitioners Ram Lal as well as Pulkit Tomar have been arrested on the basis of disclosure statements. Ram Lal has been arrested on the disclosure statements of co-accused Jubair Hassan Khan and Shrikant Tripathi; whereas, Pulkit Tomar has been arrested on the basis of disclosure statement of Ram Lal. No recovery has been effected pursuant to these disclosure statements except amount of ₹ 50,000/- from Pulkit Tomar and the mobile phone from Ram Lal, the data of which was got retrieved.

Status report filed by respondent does not reveal, as to whether the retrieved

data of mobile disclosed any link between the two petitioners or their link with co-accused.

10. Further, it is also not disputed that no contraband has been recovered from any of the petitioners. The custody certificate of both the petitioners would reveal that none of them is involved in any other criminal case. Custody period of petitioner-Ram Lal is 5 months and that of Pulkit Tomar is 4 months and 8 days. There is long list of 28 prosecution witnesses as per the status report and not even a single witness has been examined so far and thus, trial is likely to take long time to conclude.

11. Having regard to all the aforesaid facts and circumstances, but without commenting anything further on merits of the case, petitions are allowed. Petitioners are admitted to regular bail on their furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned, on usual terms and conditions.

A copy of this order be placed on the file of other connected case.

10.04.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>