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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1223-2015

Date of Decision: 23.02.2015

Raja Singh

....Petitioner

Vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.S. Godara, Advocate,
for the petitioner.

Mr. Satish Saini, DAG, Haryana assisted
by ASI Raj Kumar.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

This is the second application filed by applicant Raja Singh son of Sh. Ajit Singh for grant of regular bail in FIR No.21 dated 13.02.2014 registered under Sections 15, 16, 27-A, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Odhan, District Sirsa.

As per the allegations levelled in the FIR, on 13.02.2014 a police party headed by ASI Krishan Kumar received a secret information that Jagroop Singh @ Jumpa is smuggling Poppy Husk and that huge quantity of Poppy Husk filled in the bag, is lying in the house of Jagroop Singh. Accordingly, a raid was conducted in the house of Jagroop Singh and 53 bags of Poppy Husk each weighing 20 KG. were recovered from his

house and accordingly said Jagroop Singh was arrested.

It is further stated that on 14.02.2014 Jagroop Singh suffered a disclosure statement, wherein he stated that present applicant Raja Singh is the partner in the sale and purchase of said Poppy Husk and that he can identify the place, where the said business is carried out. However, on 16.02.2014 Jagroop Singh suffered another disclosure statement, wherein, he stated that only Raja Singh used to receive Poppy Husk from Rajasthan.

Perusal of challan shows that Raja Singh was arrested on 16.08.2014 and he stated to have identified the place where the consignment was received. Raja Singh suffered disclosure statement on 17.08.2014, wherein he admitted to be the partner of said Jagroop Singh in selling and purchase of the Poppy Husk.

Learned counsel for the petitioner has argued that in this case petitioner is in custody since 16.08.2014. The recovery was effected from the house of co-accused Jagroop Singh. The evidence against the present petitioner is:-

1. The confession made by co-accused that present petitioner is in partnership with him in the selling and purchasing of the said poppy husk.
2. The identification of place of receipt of consignment by the present petitioner Raja Singh.

Learned counsel for the petitioner states that the statement of co-accused is not admissible in evidence against present petitioner and that he can not be convicted on the basis of the statement regarding the identification of place of crime. It is further stated that there was no trace/evidence of any transaction of Poppy Husk having taken place in the said place. Therefore, merely from identifying the place where there is no

trace/evidence, the petitioner can not be convicted. The entire recovery is from Jagroop Singh and the petitioner can not be fastened with the liability. There is no other evidence against the petitioner. I agree with his contention.

Section 37 produced as under:-

Offences to be cognizable and non-bailable- (1)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)---

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless--

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-Section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

In this case, the said parameters laid in Section 37 (1) (b) (ii) are that there are reasonable grounds for believing that he is not guilty which means that he is unlikely to be held guilty of the said offence. The accused cannot be convicted on the basis of the confession made by co-accused before the police. Mere identification of place of receipt of consignment without any evidence showing that any consignment was delivered there is not a trustworthy evidence. The evidence collected by police during investigation discussed above meet said parameters for grant of bail.

Learned State counsel on instructions from ASI Raj Kumar has stated that there is no other case under the Narcotic Drugs and Psychotropic Substances Act, 1985 against the present petitioner, therefore, there is no ground to believe that he had committed the offence under Narcotic Drugs and Psychotropic Substances Act, 1985 by keeping in view his previous history.

Moreover, it is a case of no recovery from the present petitioner. As such, the present petition is allowed and petitioner is ordered to be released on bail on his furnishing personal bonds in the sum of Rs.2,00,000/- with one surety of the like amount to the satisfaction of the trial Court subject to the following conditions:-

- (i) that the petitioner will not commit any crime of similar nature and in case it is found that the petitioner has committed any crime of similar nature, then the trial Court is competent to cancel this bail order and cancel the bail;
- (ii) that the petitioner will not leave the country without prior permission of Court and will surrender his passport before the trial Court. The same will be returned to the petitioner on conclusion of the trial. In case, there is no passport issued to the petitioner, he shall file his affidavit to this effect.

Petition is accordingly allowed.

February 23, 2015
Ishant

(KULDIP SINGH)
JUDGE