

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1224 of 2015

Date of decision: April 01, 2015

Buta Singh

.... Petitioner..

Versus

State of Punjab

.... Respondent..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vivek K. Thakur, Advocate,
for the petitioner.

Mr. R.S. Sidhu, AAG, Punjab,
for respondent-State.

Jaspal Singh, J.

This order shall dispose of petition preferred under Section 439 of the Code of Criminal Procedure (for brevity, 'Code') by Buta Singh, in case bearing FIR No. 97, dated 10.05.2014, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'Act') at Police Station Phillaur, District Jalandhar (Punjab).

2. Instant case was registered on the basis of secret information to the effect that petitioner is engaged in selling of poppy husk. He has ordered huge quantity of poppy husk for transportation, which is being brought by Hari Shankar and Kallu, in canter bearing No. HR-55K-5778. If raid is conducted forthwith, above referred persons as well as canter can be caught red handed. Police party headed by SI Jarnail Singh, CIA, Jalandhar conducted raid and both persons named

above travelling in canter were intercepted at spot. Poppy husk powder contained in 110 bags weighing 25 kg each was recovered from canter. Petitioner was allegedly waiting for arrival of said canter while sitting in his Innova car at some distance from the place of recovery and ultimately, succeeded in fleeing away from spot.

3. The contention of learned counsel for petitioner is that neither petitioner has been arrested at spot nor recovery of poppy husk or any other intoxicant/contraband has been effected either from his possession or at his instance. Mere fact that his name figured in FIR or that he is allegedly engaged in sale of poppy husk does not *ipso facto* mean that he is in any way connected with alleged recovery of poppy husk from the possession of Hari Shankar and Kallu. Moreover, on the date of alleged recovery and arrest of Hari Shankar and Kallu, petitioner was under treatment at Bajaj Nursing Home Surgical & Laproscopic Centre, Jalalabad (West). While referring to copy of medical certificate-cum-discharge slip (Annexure P-1), learned counsel for petitioner canvassed that petitioner was admitted in aforesaid hospital on May 09, 2014 and discharged on May 11, 2014. Subsequent thereto, petitioner was arrested on July 11, 2014, when another case of similar nature was falsely slapped upon him. In fact, on the date and time of his alleged arrest and recovery of poppy husk from his possession, he was present at Service Station and he has already moved an application before Judge, Special Court, Jalandhar to produce CCTV footage of said Service Station to falsify story concocted by police with regard to his alleged arrest and recovery of poppy husk on July 11, 2014. However,

he was arrested on July 11, 2014, challan has already been presented, which is likely to take sufficient time for its final disposal. He is ready to abide by all the terms and conditions imposed by the Court, in case, he is granted concession of bail.

4. These arguments have been controverted by learned State counsel submitting that in fact petitioner is indulging in business of poppy husk on large scale, who is owner of Innova car bearing registration No.PB-08-CJ-1883 and huge consignment of poppy husk powder was ordered by him, in pursuance of which, poppy husk was being brought by his co-accused Hari Shankar and Kallu in canter bearing No.HR-55K-5778. Petitioner was also standing at some distance from the place of recovery of poppy husk loaded in above referred canter and on seeing police party there, he accelerated his Innova car and fled away. Moreover, he is involved in some other cases of similar nature. He, accordingly, prayed dismissal of present petition.

5. This Court has given an anxious thought to rival submissions made by learned counsel for parties and has meticulously gone through records.

6. Undeniably, neither poppy husk in question nor any other incriminating article was recovered either from the possession of accused or at his instance. He was also not intercepted at spot. He was allegedly arrested on July 11, 2014 but nothing was recovered from him to connect him with instant case. Mere fact that his name figured in FIR, is itself not conclusive to hold that poppy husk was being transported at his instance by his co-accused in canter. Nothing has also emerged on

record showing involvement of petitioner in instant case, even from the custodial interrogation of Hari Shankar and Kallu.

7. Here, it would also be pertinent to mention that canter bearing registration No. HR-55K-5778 was neither owned by petitioner nor he has got any concern with it. Rather, from documents collected by Investigating Officer, during course of investigation, one Ashok Kumar is registered owner of canter in question. Said Ashok Kumar could not be arrested by police till presentation of challan or subsequent thereto even after presentation of challan. He could have thrown some light with regard to alleged consignment of poppy husk or role, if any, of petitioner. Mere fact that huge quantity of recovery of poppy husk that too from Hari Shankar and Kallu is itself not sufficient to decline bail to petitioner especially, when recovery has not been effected from him.

8. In the light of what has been discussed above and the fact that petitioner is behind bars since the date of his arrest i.e. July 11, 2014, petition is allowed and petitioner-Buta Singh is ordered to be released on bail, during pendency of trial, at the satisfaction of trial court.

April 01, 2015
sonika

(JASPAL SINGH)
JUDGE