

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

**C.R.M-M No.43702 of 2014
Date of Decision : 13.01.2015**

Dharam Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Rahul Sharma, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, Addl.A.G., Punjab.

1. Whether Reporters of local papers 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?

AJAY TEWARI, J. (Oral)

The petitioner seeks grant of regular bail in case FIR No.98, dated 14.05.2014, registered under Sections 15/61/85 of the NDPS Act, at Police Station Rajpura City, District Patiala.

Counsel for the petitioner has argued that the petitioner was allegedly arrested with 330 kgs of poppy husk on 14.05.2014. Challan has been presented on 24.11.2014 to avoid the operation of the provisions of Section 167 of the Cr.P.C but even till date no FSL report has come certifying that the alleged seizure was in fact a narcotic or psychotropic

substance. As per him, even though the petitioner is not invoking the provisions of Section 167 of the Cr.P.C but he is praying that till such time as the FSL report comes, and the alleged seized material is identified, he should be released on interim bail.

Counsel for the respondent has not disputed the factual assertion but has opposed the prayer for bail on the ground that the recovery is extremely heavy.

To my mind, the argument of counsel for the petitioner has to be accepted. The prosecution cannot take advantage of its own inability to have the seized material analyzed and even if the provisions of Section 167 of the Cr.P.C are not invoked, yet the petitioner cannot be kept indefinitely in custody till the essential pre-requisite of identification of the seized material as a narcotic drug or a psychotropic substance is not met.

In the circumstances, this petition is disposed of with a direction to the trial Court to release the petitioner on interim bail to its satisfaction till the FSL report comes and thereafter to take a final decision on the application for bail.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

January 13, 2015

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**(AJAY TEWARI)
JUDGE**