

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

**CRM-M No.4035 of 2016 (O&M)
Date of Decision: 18.02.2016**

Daler Singh @ Sonu

..... Petitioner

Vs.

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Harchand Singh Batth, Advocate for the petitioner.

Mr. Mikhail Kad, Assistant Advocate General, Punjab
for the respondent/State assisted by ASI Kirpal Singh.

JASWANT SINGH, J. (Oral)

The prayer is for grant of regular bail under Section 439 Cr.P.C. to the petitioner in case FIR No.22 dated 03.03.2015, under Sections 21, 22 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), registered with Police Station Valtaha, District Tarn Taran.

The petitioner was apprehended by the police party by following him after he refused to stop. He tried to throw the polythene bag after taking out the same from right pocket of his lower (track bottom).

The polythene contained 255 Grams of *Intoxicating Powder*, which as per the FSL Report received on 06.08.2015, is commercial in nature.

The petitioner was released on interim bail on 13.05.2015 due to non-receipt of the FSL Report, however, on the receipt of such report, he was taken into custody on 01.10.2015.

Learned Counsel for the petitioner submits that although the seized contraband is commercial in nature, however, in the light of the petitioner having not misused the interim bail, is liable to be enlarged on regular bail. In support, he has cited judgments passed by this Court bearing **CRM-M**

No.21761 of 2013 titled as '**Mohinder Singh Vs. State of Punjab**', decided on

03.09.2013, CRM-M No.39294 of 2012 titled as '**Jarmanjit Singh Vs. State of Punjab**' decided on **14.05.2013** and **CRM-M No.40677 of 2015** titled as '**Bachittar Singh Vs. State of Punjab**', decided on **29.01.2016**.

Learned State Counsel, assisted by ASI Kirpal Singh, on the other hand, contends that the said cited judgments are decisions in their own facts and have no binding value on the present case since the bar contained under Section 37 of the NDPS Act in case of commercial quantity has not been considered.

This Court is in agreement with the arguments raised by learned State Counsel.

There is a specific bar provided under Section 37 of the NDPS Act regarding grant of bail in case the seized quantity is commercial in nature, however, the exception to such a bar is that there are reasonable grounds for believing that the accused is not guilty of such an offence and is not likely to commit an offence while on bail.

In the facts of the present case, there is no material on record which would make the Court reasonably believe that the petitioner is not guilty of the alleged offence. Merely because he has not committed any offence during the interim bail, if so, this would not constitute the basis for by-passes the bar of Section 37 of the NDPS Act.

In view of the above, no case for grant of regular bail is made out.

Accordingly, the present petition is dismissed.

February 18, 2016
Gagan

(JASWANT SINGH)
JUDGE