

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 208

CRM-M-1823-2017

Decided on : 27.04.2017

Harjinder Singh @ Jinder

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Nandan Jindal, Advocate, for the petitioner.

Mr.Neeraj Yadav, AAG, Punjab.

DEEPAK SIBAL, J. (ORAL)

Through the present petition filed under Section 439 Cr.P.C., the petitioner seeks regular bail in FIR No.67 dated 01.08.2016, registered under Sections 15/61/85 of the NDPS Act, at Police Station Sadar Sunam, District Sangrur.

Seeking regular bail for the petitioner, learned counsel for the petitioner submits that the case of the prosecution is that 03 bags containing 20 kgs each of Poppy Husk were recovered from two persons i.e. the petitioner and Pritpal Singh from the rear seat of a car. He further submits that if the weight of the bags is excluded then in all likelihood the recovery would be of non-commercial quantity or at the most marginally higher than the commercial quantity; there is no other criminal case pending against the petitioner; the petitioner is in custody for the last about nine months; since till date, only one out of the thirteen cited prosecution witnesses has been examined, the trial is unlikely to be concluded in the near future and that through the order of this Court dated 01.03.2017, passed in CRM-M-35941-2016, co-accused Pritpal

Singh has been granted regular bail.

Learned counsel for the petitioner has further relied upon orders dated 29.10.2013 and 08.07.2016 passed by this Court in **CRM-M No.31816 of 2013-Malkiat Singh @ Surjit Singh @ Bittu Vs. State of Punjab** and in **CRM-M No.10778 of 2016-Ranjit Singh Vs. State of Punjab**. They read as under:-

“CRM-M No.31816 of 2013

This petition under Section 439 Cr.P.C is for grant of regular bail to the petitioner in case F.I.R No.133 dated 09.09.2011, under Sections 15/61/85 of Narcotic Drugs & Psychotropic Substances Act, registered at Police Station Phillaur, District Jalandhar.

The petitioner has been in custody since September, 2011 i.e. for almost two years. Recovery in this case is 60 Kgs of poppy husk, which is marginally higher than the 'non commercial' quantity.

Learned State counsel, on instructions from HC Manmohan Singh, has informed the Court that the challan has already been presented in the Court and now the case is fixed for 18.11.2013 for prosecution evidence.

Keeping in view the period of incarceration of the petitioner and the fact that trial may still take some time for its conclusion, this court feels that there is no need to detain the petitioner any longer. Accordingly, the petition is allowed and petitioner is ordered to be enlarged on bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Jalandhar.”

“CRM-M No.10778 of 2016

By filing the present petition, under Section 439 of the Code of Criminal Procedure, the petitioner has sought regular bail in case FIR No. 5 dated 13.01.2016, registered under Section 15 of the NDPS Act, at Police Station Sirhind, District Fatehgarh Sahib.

Learned counsel for the petitioner contends that allegedly 60 kg of poppy husk was recovered from the boot of car No.PB-12F-2235 of which the petitioner was one of the occupants. He further states that he is not owner of the car and the recovery was not effected from the conscious possession of the petitioner. The quantity recovered from the boot of the car was non commercial as the weight of the carry bag has also been included. The petitioner is in custody since 13.1.2016. Out of nine prosecution witnesses, none has been examined so far.

On the other hand, learned State counsel opposes the bail application.

I have heard learned counsel for the parties and perused the record.

Considering the fact that the recovery was not effected from the conscious possession of the petitioner, the quantity recovered from the boot of the car was non commercial, as the weight of the carry bag has also been included, the petitioner is in custody since 13.1.2016 and out of nine prosecution witnesses, none has been examined so far, therefore, it can be inferred that the trial is not likely to be concluded in near future, without adverting to the merits of the instant case, this petition is allowed. The petitioner be admitted to bail during the pendency of trial, on his furnishing bail bonds and surety bonds, to the satisfaction of the trial Court.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.”

Learned State counsel opposes the grant of bail to the petitioner on the ground that commercial quantity of Poppy Husk has been recovered from him and his co-accused.

The alleged recovery was effected from the rear seat of a car which has admittedly not owned by the petitioner; if the weight of the bag is disregarded, the alleged recovery could be of non-commercial quantity or at the most marginally higher than the prescribed commercial quantity; there is no other case pending against him; the afore-quoted orders of this Court support the petitioner's case; the petitioner has already undergone over nine months of custody; since till date only one out of the thirteen witnesses cited by the prosecution has been examined, the trial is unlikely to be concluded in the near future and co-accused Pritpal Singh has already been granted regular bail by this Court.

In view of the above, I am of the view that the petitioner deserves to be admitted to bail during the pendency of the trial on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court.

Nothing observed hereinabove shall be considered to be an expression of opinion by this Court on the merits of the case.

In case, the petitioner is found indulging in any other criminal activity/misusing the concession of bail, it will be open to the State to move an appropriate application before the Competent Court/this Court for cancellation of the granted to the petitioner through this order.

27.04.2017
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No