

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

**CRM-M No.2435 of 2017
Date of Decision: 08.05.2017**

Bharat Khanna

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Prabhjeet Kaur, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab
for the respondent-State.

DEEPAK SIBAL J. (ORAL)

Learned State counsel has filed custody certificate of the petitioner in Court today, which is ordered to be taken on record. A copy of the same has been handed over to learned counsel for the petitioner.

Through the present petition filed under Section 439 Cr.P.C., the petitioner seeks the grant of regular bail in FIR No.174, dated 28.08.2016, registered under Sections 15, 61 and 85 of the NDPS Act, at Police Station Sahnewal, District Ludhiana.

Seeking regular bail for the petitioner, learned counsel submits that the petitioner has been in custody for over 08 months; there is no other criminal case in which the petitioner is involved; the alleged recovery of poppy husk from the petitioner is 54 Kgs which if the weight of the bags is excluded, in all likelihood, would be of non-commercial quantity or at the most marginally higher than the prescribed commercial quantity; none of the witnesses cited by the prosecution have been examined and therefore, the trial is not likely to conclude in the near future.

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.

The alleged recovery of poppy husk from the petitioner is 54 Kgs which if the weight of the bags is excluded, in all likelihood, would be of non-commercial quantity or at the most marginally higher than the prescribed commercial quantity; there is no other criminal case in which the petitioner is involved; the afore-quoted orders of this Court support the petitioner's case; the petitioner has already undergone over 08 months of custody and since none of the witnesses cited by the prosecution has been examined, the trial is not likely to conclude in the near future.

In view of the above, I am of the opinion 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.

During the period that the bail is granted to the petitioner, if he is found indulging in any criminal/illegal activity or misusing the concession of bail granted by this Court, it would be open to the State to move an appropriate application before the competent Court/this Court for cancellation of the bail granted to the petitioner.

May 08, 2017

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**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No