

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

CRM-M-11061-2018

Date of Decision: 28.03.2018

Tarsem Singh

.....Petitioner

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Sandeep Verma, Advocate,
for the petitioner.

Ms. Monika Jalota, Deputy Advocate General, Punjab.

AMOL RATTAN SINGH, J. (Oral)

The question in this case is as to whether what is contended to have been recovered from the petitioner, i.e. poppy plants, falls within the definition of opium poppy as defined in Section 2(xvii) of the NDPS Act, 1985, or falls within the definition of poppy straw as defined in Section 2(xviii) of the Act.

Admittedly, what has been described as poppy plants in the FIR, was recovered from the possession of the petitioner while he was on a motorcycle, even as per the case of the prosecution.

Section 2 (xvii) and (xviii) are reproduced hereinunder:-

“Section 2(xvii): “opium poppy” means -

- (a) the plant of the species *Papaver somniferum* L.; and
- (b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declared to be opium poppy for the purposes of this Act.

Section 2(xviii): “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.”

The question therefore would be, is it to be treated as poppy straw, with the poppy having been already harvested, or whether it is to be treated as a plant which is still to be replanted/harvested, thereby making it an offence punishable under Section 18 of the Act rather than Section 15, the commercial quantity in respect of both being wholly different.

With that issue still to be gone into even by the trial Court, the petitioner already having put in 2 months and 11 days of actual custody, with the quantity recovered from him being 10 kgs, which if eventually it is found to be poppy husk would be non-commercial quantity, (the commercial quantity being 50 kgs), I consider it appropriate to admit the petitioner to bail at this stage, on his furnishing adequate bail and surety bonds to the satisfaction of the trial Court.

Disposed of.

March 28, 2018

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO