

Crl. Misc. No. M-14321 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-14321 of 2018

DATE OF DECISION:22.05.2018

Gurpartap Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. P.S. Sekhon, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to petitioner-Gurpartap Singh in case FIR No. 47 dated 30.5.2017 registered under Sections 15/25/60/61/85 of NDPS Act at Police Station Bhikhi, District Mansa.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the case as contraband was recovered from the truck-trailer and provisions of Section 42 and 50 of NDPS Act have not been complied with. Learned counsel further contends that the petitioner is in custody since the date of lodging of FIR i.e. 30.5.2017 and challan has already been presented in the case. As per allegations, the petitioner was only sitting and three bags containing 25 kgs poppy husk each were

recovered from the trailer. The petitioner is neither the owner of the truck-trailer nor recovery was effected from his conscious possession.

Learned counsel for respondent-State has opposed the submissions made by learned counsel for the petitioner. The petitioner was found in possession of 75 kgs of poppy husk without any licence or permit. Learned State counsel further submits that as per FSL report, Morphine and other Alkaloids of opium were found in the samples. The recovery falls under the commercial quantity. Learned State counsel also submits that in case of possession of commercial quantity, there is a bar under Section 37 of the NDPS Act and the petitioner is not entitled for bail at this stage as offence is serious in nature.

Heard the arguments advanced by learned counsel for the petitioner as well State counsel and have also gone through the contents of the FIR and other documents available on the file.

As per allegations in the FIR, contraband i.e. three bags containing 25 kgs of poppy husk each were recovered from the truck-trailer, of which the petitioner is not the owner and, therefore, the recovery cannot be said to be from the conscious possession of the petitioner. The contraband was recovered from joint possession of three persons. The challan in the case has been presented and trial is at the initial stage. The petitioner is in custody since the date of lodging of FIR i.e. 30.5.2017.

Under the similar circumstances, where, the recovery was 80 kgs of poppy husk, petitioner, namely, Bhim Singh @ Bhima was released on regular bail in Crl. Misc. No. M-25556 of 2010 vide order dated 25.10.2010. Similarly one Avtar Singh @ Malhotra, who was found in possession of four bags of poppy husk containing 20 kgs each, was released

on regular bail by this Court vide order dated 11.4.2014 passed in Crl. Misc. No.M-11592 of 2014.

Accordingly by considering the facts that the petitioner is in custody since the date of loding of the FIR i.e. 30.5.2017; all are official witnesses; trial may take long time to conclude; whether the petitioner was in conscious possession of the contraband or not is to be considered by the trial Court and also that the petitioner is not involved in any other case of NDPS Act, the present petition is allowed and the petitioner is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of trial Court.

May 22, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes