

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

CRM-M No. 31058 of 2018

Date of decision : 14.11.2018

Kala Singh

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Satnam Singh Gill, Advocate for the petitioner.

Mr. Amit Mehta, Senior DAG, Punjab.

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DAYA CHAUDHARY, J.

Petitioner Kala Singh has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.8 dated 19.01.2018 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS Act') and Section 489 of the Indian Penal Code, 1860, registered at Police Station – Ghanour, Distt. Patiala, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas he was not involved. As per the case of the prosecution, the petitioner along with co-accused namely Ranjit Singh was arrested at the spot, whereas other accused namely Lachman Singh has been shown to have run away from the spot. The alleged recovery effected from the car is 50 kilograms poppy husk and 30

kilograms Chura Dana Posat (poppy seeds). Learned counsel also submits that recovery of 50 kilograms poppy husk falls under non-commercial quantity and 30 kilograms Chura Dana Posat does not fall under the purview of provisions of the NDPS Act. He also submits that at the time of alleged recovery, no independent witness was joined and mandatory provisions of the NDPS Act have not been followed. Petitioner is in custody since lodging of the FIR *i.e.* 19.01.2018. Learned counsel also submits that all the prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence. In support of his arguments, learned counsel for the petitioner has also relied upon judgments in case ***Hans Raj Vs. State of Punjab 1997 (4) R.C.R. (Criminal) 573***, wherein it was held that seeds of poppy plant does not come within the definition of opium and thus does not fall under the NDPS Act.

Learned State counsel has not disputed the custody period undergone by the petitioner and also ratio of the judgment relied upon by learned counsel for the petitioner.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents available on the file.

Admittedly, the alleged recovery of poppy husk is non-commercial and the poppy seeds do not fall under the purview of NDPS Act in view of ratio of law laid down in ***Hans Raj's*** case (*supra*). All the prosecution witnesses are official witnesses and there is no possibility that

the petitioner may influence them or tamper with the evidence. There is no other case of NDPS Act against the petitioner.

Accordingly, 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 the trial Court.

14.11.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No