

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

Sr. No.205

CRM-M-37827-2017
Date of decision : 23.01.2018

Deepak

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CRM-M-38686-2017

Dashrath Jain

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Anurag Arora, Advocate
for the petitioner in CRM-M-37827-2017.

Mr. Deepak Sabherwal, Addl. A.G., Haryana.

Mr. Rajender J. Rathod, Advocate
for the petitioner in CRM-M-38686-2017.

SUDHIR MITTAL, J.

This order shall dispose of two petitions viz. CRM-M-37827-2017 titled as 'Deepak Vs. State of Haryana' and CRM-M-38686-2017 titled as 'Dashrath Jain Vs. State of Haryana' filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No.257 dated 09.07.2017, registered at Police Station, Kundli, District Sonapat, under Sections 15 and 29 of the NDPS Act, 1985 read with Sections 420, 467, 468 and 471 of Indian Penal Code, 1860.

2. The police received information that a vehicle of blue colour bearing registration No.MP-44-GA-1168, is bringing poppy husk from

Sri Sri Enterprises, Plot No.304, Factory Area, Kundli, and will supply the same to the hotels situated on G.T. road. Based on this information, a police party reached Plot No.304, Factory Area, Kundli, where a vehicle bearing registration No.MP-44-GA-1168 of blue colour and Tata Ashok Leyland make, was found coming out from the gate. The police party stopped the said vehicle and nabbed its driver and another person, who was sitting on the seat adjoining the driver. The driver was named Suresh son of Surja Ram Dhanak, whereas his companion was named Mukesh son of Anandi Lal. Necessary formalities were completed and the vehicle was searched, which led to recovery of 29 bags and 30 kattas containing poppy husk powder. The total weight of the contents was 2140 kilograms poppy husk. Both these persons were arrested and their police remand was obtained. Mukesh son of Ananandi Lal got demarcated his godown in Neemuch, Madhya Pradesh, where he was storing poppy seeds obtained from the market and supplying to various consumers. During the course of investigation, it was also revealed that Dashrath Jain (petitioner in CRM-M-38686-2017) was the owner of the vehicle impounded by the police and that Deepak son of Gopal Singhal (petitioner in CRM-M-37827-2017) was a partner in Sri Sri Enterprises, which was carrying on its business from Plot No.304, Factory Area, Kundli, District Sonapat. Dashrath Jain was arrested on 11.07.2017 and Deepak was arrested on 12.07.2017. The factory, i.e. Plot No.304, Factory Area, Kundli, was searched, after Mukesh son of Ananadi Lal got recorded a confessional statement in the presence of Duty Magistrate, which led to recovery of 70,950 kilograms of poppy seeds from the said factory premises. After completion of investigation, report dated 26.08.2017, under

Section 173 Cr.P.C. against Suresh, Mukesh son of Ananadi Lal, Dashrath Jain and Deepak son of Gopal Singhal, was presented in Court.

3. Learned counsel for the petitioner contends that 'poppy seeds' have been recovered from the factory premises and that 'poppy seeds' are not a narcotic/psychotropic substance. In this regard, reliance is placed upon the definition of 'poppy straw' mentioned in Section 2(xviii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The same is reproduced below:-

'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.'

4. Poppy husk/poppy straw has not been recovered from the factory premises and that the case set-up by the prosecution that 'poppy seeds' are being used to manufacture 'poppy straw' is incredulous because 'poppy seed' is found on the poppy plant and the rest of the plant is 'poppy straw'. 'Poppy seeds' cannot be converted into 'poppy straw' by any means known to human kind. The petitioner, namely, Deepak is using the 'poppy seeds' for manufacture of other licensed substances and he deals in the same. The petitioner, namely, Dashrath Jain is the owner of the vehicle, in which the contraband was allegedly being transported. He is not involved in the transportation of 'poppy straw' as is evident from the disclosure statement of the driver-Suresh. The vehicle had transported 'poppy seed' from Neemuch to Kundli and the same is not an offence. The goods receipt recovered by the police has the name of his company 'Shri Ganesh Goods Carrier' mentioned upon it and also has his phone number and other details

mentioned thereupon and therefore, the offence under Sections 420, 467, 468 and 471 IPC are not made out.

5. On the other hand, learned State counsel submits that a very large quantity of 'poppy straw' has been recovered from the vehicle owned by Dashrath Jain. As per the disclosure statements of the driver-Suresh and his companion-Mukesh son of Ananadi Lal, the contraband was loaded within the factory premises and the vehicle was intercepted outside the gate of the factory premises. He submits that the goods receipt is fake because police inquiries have revealed that there is no transporter in the name and style of 'Shri Ganesh Goods Carrier' registered in the State of Madhya Pradesh. He further submits that blank receipt book was recovered on the disclosure statement of Dashrath Jain.

6. Having heard learned counsel for the parties and perused the record, I am of the opinion that these petitions for grant of regular bail, deserve to be rejected for the reasons mentioned hereinafter.

7. Learned counsel for the petitioner did not dispute that large quantity of 'poppy straw' was recovered from the vehicle emerging from the factory premises. Thus, the inference that the contraband was loaded within the factory premises is reasonable. The quantity recovered is much more than the commercial quantity mentioned in the table appended with Notification, dated 19.10.2001, issued by the Central Government. Thus, Section 37 of the NDPS Act, 1985, is squarely attracted. The petitioners are obviously members of a gang dealing in transportation of the contraband, i.e. 'poppy straw' and if they are released on bail, it is likely that they will re-commence their activities. Moreover, it is not a case where, on the basis of evidence on the record, it can be said that the petitioners are not guilty of

committing an offence under the NDPS Act, 1985. The contention on behalf of the petitioner-Dashrath Jain that the offences under Sections 420, 467, 468 and 471 IPC, are not made out is not tangible because during the investigation, it has come to light that there is no transporter in the name and style of 'Shri Ganesh Goods Carrier' registered in the State of Madhya Pradesh. Thus, obviously it means that the petitioner-Dashrath Jain, is using his vehicle under the name and style of a particular transport company, which is not in existence and therefore, prima facie, offences under the aforementioned provisions of the Indian Penal Code, 1860, are made out.

8. It is true that 'poppy seed' is not a narcotic/psychotropic substance and that the petitioners cannot be prosecuted under the NDPS Act, 1985, for possession of the said substance. However, bail applications of the petitioners are liable to be rejected on the ground of recovery of a huge quantity of 'poppy straw' which is corroborated by a report dated 06.11.2017, submitted by the Forensic Science Laboratory, Madhuban, Karnal and the probability of the petitioners being involved in dealing with the same in connivance with each other cannot be ruled out.

9. For the aforementioned reasons, the petitions are dismissed.

(SUDHIR MITTAL)
JUDGE

January 23, 2018

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No