

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 07.05.2018

1. CRM-M-42522-2017 (O&M)

Surinder Singh @ Chinda

...Petitioner

Versus

State of Punjab

...Respondent

2. CRM-M-48336-2017 (O&M)

Harbhajan Singh

...Petitioner

Versus

State of Punjab

...Respondent

3. CRM-M-13557-2018 (O&M)

Gurmail Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Manuj Nagrath, Advocate
for the petitioners (in CRM-M-42522-2017 &
CRM-M-13557-2018).

Mr. Gitish Bhardwaj, Advocate
for the petitioner (in CRM-M-48336-2017).

Mr. Abhay Pal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J.CRM-M-42522-2017

Prayer in this petition is for grant of regular bail in FIR No.25 dated 23.04.2017 under Sections 15/61/85 of NDPS Act, registered at Police Station Ganaur, District Patiala.

Learned counsel for the petitioner Surinder Singh @ Chinda submits that as per allegations in the FIR, the police party had set up a barrier and stopped a car, which was driven by a Sikh person and two clean shaved persons were sitting on the front seat and back seat. On disclosure, the driver told his name as Surinder Singh @ Chinda and two other co-passengers disclosed their names as Harbhajan Singh @ Bhajna and Gurmail Singh @ Goli. On suspicion, a notice was given for being searched before the Magistrate or a Gazetted Officer and all the three persons reposed faith in ASI Baljeet Singh and thereafter, on conducting the search, a plastic bag kept between the seat cover of the back seat, was found containing black seeds of poppy husk were found, which on weighing was found to be 84 kg.

Learned counsel for the petitioner further submits that the sealed sample parcels of black coloured poppy husk seed were sent for chemical examination and as per report of the FSL, in the column of sample, it is mentioned as "*brownish black coloured dried small round shaped seeds of plant*" and in the column of report, it is stated that mennonice acid is found, in the sample parcels. It is further submitted that the petitioner Surinder Singh @ Chinda is in judicial lockup for more than 01 year and decision of the trial will take long time.

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **Ajaib Singh Vs. State of Punjab, 2000 (2) RCR (Crl.) 633** to submit that as per definition of opium, as per Section 2(xv) and 2 (xviii), the seeds are excluded from the definition of poppy straw, which is part of opium poppy being a plant of the species *Papaver somniferum* L. Counsel for the petitioner has further relied upon judgment of the Himachal Pradesh High Court in **State of H.P. Vs. Sucha Singh and another, 2011 (9) RCR (Crl.) 92**, in which it is held that except for seed, all other parts of the plant species *Papaver somniferum* L would fall within the terms poppy straw and has upheld the judgment of acquittal holding that poppy seeds are not covered in the definition of opium poppy or poppy straw.

CRM-M-48336-2017 & CRM-M-13557-2018

Prayer in these petitions is for grant of regular bail to co-accused namely Harbhajan Singh and Gurmail Singh in the aforesaid FIR, on similar grounds. It is submitted that petitioners Harbhajan Singh and Gurmail Singh have also undergone about one year of custody and they are not involved in any other case, investigation is complete and conclusion of the trial will take long time.

Learned State counsel, on instructions from Dr. Ashu Talwar, Assistant Director, FSL, Mohali and the Investigating Officer, has however opposed the prayer for bail to the petitioners on the ground that recovery of poppy seeds (khas-khas) is effected from the petitioners and as per FSL report, it contains mennonic/morphine acid and therefore, it is a narcotic

substance.

After hearing learned counsel for the parties, I find merit in these petitions.

A perusal of the FIR shows that alleged recovery was of poppy husk black seeds and the sample, which was sent to FSL also contained brownish black coloured dried small round shaped seeds of plant, certified as poppy seeds (khas-khas) by the FSL, as per chemical examination report (Annexure P-2) and therefore, it will be a debatable issue in the light of the judgments referred to above, whether the same fall in the definition of poppy husk or opium poppy and also in view of the fact that the petitioners are in judicial lockup for the last 01 year and conclusion of the trial will take some time, all these petitions are allowed and petitioners Surinder Singh @ Chinda, Harbhajan Singh and Gurmail Singh are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

[ARVIND SINGH SANGWAN]
JUDGE

07.05.2018

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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No