

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

CRM-M No.47036 of 2017

Date of decision : 03.10.2018

Varinder Singh alias Kaka

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Amit Mehta, Senior DAG, Punjab.

* * *

DAYA CHAUDHARY, J.

Petitioner Varinder Singh alias Kaka has approached this Court by way of filing the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.93 dated 05.09.2017 under Sections 15/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – 'NDPS Act') registered at Police Station Chohla Sahib, Distt. Tarn Taran.

Learned counsel for the petitioner submits that the petitioner is a handicapped person and is having short right leg as it was got amputated. He has falsely been implicated in the case along with co-accused namely Kuldeep Singh and Dilbagh Singh at the instance of SI Sukhraj Singh by alleging that the complainant received a secret information to the effect that all the accused persons were standing while waiting for their customers just

to hand over the consignment of poppy husk and they could be apprehended if raid was conducted. On the basis of a secret information, the police party intercepted the accused persons and three gunny bags weighing 30 kilograms each of poppy husk were got recovered from back seat of the car. The accused persons were arrested. Learned counsel further submits that actually the petitioner was picked up from his house by the police officials but they showed his presence in the alleged offending vehicle along with the co-accused. Learned counsel also submits that no independent witness was joined by the police party at the time of the alleged recovery. As per the case of the prosecution, the alleged offending car belongs to one Jagmohan Singh who is not known to the petitioner. There is no evidence available on record to connect the petitioner with the offending vehicle from which the alleged recovery of contraband was effected. The petitioner was arrested on 05.09.2017 and since then he is behind the bars. Three persons have been implicated in the case by showing total recovery of 90 kilograms poppy husk. In case the same is divided into three, the alleged recovery falls under the ambit of non-commercial quantity. In support of his submissions, learned counsel for the petitioner has placed reliance upon judgments of this Court in cases ***Shadi Lal Vs. State of Punjab 2014 (31) R.C.R. (Criminal) 547, Balbir Singh Vs. State of Punjab 2014 (22) R.C.R. (Criminal) 625, Kuldip Singh Vs. State of Punjab 2011 (22) R.C.R. (Criminal) 492, Gurpreet Singh Vs. State of Punjab (Criminal Misc. No.M-25422 of 2011, decided on 04.11.2011)*** as well as order dated 18.05.2018 passed in ***CRM No.36556 of 2017 in CRA-D-611-DB of 2016***

titled as ***Avtar Singh and another Vs. State of Punjab.***

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that the judgments relied upon by learned counsel for the petitioner are not applicable in the present case and relies upon judgment of Full Bench of this Court in case ***Bhupinder Singh alias Bhinda Vs. State of Punjab 2005(1) R.C.R. (Criminal) 168.***

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

As per allegations in the FIR, total three bags containing 30 kilograms poppy husk each were recovered from the offending vehicle and the petitioner is neither the owner nor driver of the vehicle. The recovery cannot be said to be in the form of conscious possession of the petitioner. The contraband was recovered from joint possession of three persons. Challan has been presented in the Court and trial is at the initial stage. All the prosecution witnesses are official and there is no possibility that petitioner may influence them or tamper with the record. There is one more case of NDPS Act against the petitioner but he is on bail in that case.

Under the similar circumstances, where the recovery was 80 kilograms of poppy husk and the petitioner in that case was released on regular bail in CRM-M No.25556 of 2010 vide order dated 25.10.2010. Similarly, one Avtar Singh alias Malhotra, who was found in possession of four bags of poppy husk containing 20 kilograms each, was also released on

regular bail by this Court vide order dated 11.04.2014 passed in CRM-M No.11592 of 2014.

By considering the submissions and law position as discussed above and also by considering the period of custody undergone by the petitioner *i.e.* he is in custody since the date of lodging of the FIR *i.e.* 05.09.2017 and keeping in view the fact that all the prosecution witnesses are official and there is no possibility that the petitioner may influence them or tamper with the evidence and the conscious possession of the contraband is to be seen by the trial Court at the time of trial, 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.

03.10.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No