

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M 17360 of 2020 (O&M)

Date of decision: 21.7.2020

Surjeet Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. RS Mamli, Advocate,
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

JAISHREE THAKUR, J. (Oral)

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

The petitioner herein has filed this petition under Section 439 of the Code of Criminal Procedure for grant of regular bail in case FIR No. 195 dated 19.4.2020, under Sections 16 & 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 27-A NDPS subsequently added), registered at Police Station City Fatehabad, District Fatehabad.

Learned counsel for the petitioner herein would argue that the bail application filed by the petitioner has wrongly been rejected by the Additional District Judge, Fatehabad. It is argued that there are allegations that the petitioner is guilty of growing poppy plants on the land without a valid licence. It is argued that in fact the said land does not belong to the petitioner and there is no concrete proof that he is the owner of the land in question. It is further argued that in any case the recovery of the alleged contraband would be non commercial in nature since 225 poppy plants were

uprooted which weighed total 7 kgs 600 grams and if opium is derived from the said plants, it would not be commercial quantity. It is further argued that the bail has wrongly been rejected by the trial court, while interpreting Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Learned counsel would further submit that Section 18 pertains to punishment for contravention in relation of opium poppy and opium and Section 18 (a) provides a condition that where the contravention involves small quantity, the punishment would be for a term of one year or with fine which may extend to ten thousand rupees, or both. Learned counsel further argued that the case of the petitioner herein at best would fall under the offence of growing of poppy plants and the recovered poppy husk is non commercial quantity.

Per contra, learned counsel for the respondent—State urges that the petitioner was found involved in cultivation of poppy plants on 19 marlas of land, which he had purchased from Ginni Devi widow; Arun Kumar, Sharwan Kumar, Deepak Kumar, Ajay Kumar and Vijay sons of Gauri Shankar. It is contended that there is no infirmity in the order rejecting the bail application and therefore, the petitioner does not deserve the concession of regular bail.

I have heard learned counsel for the parties and with their assistance have gone through the pleadings.

'Opium' is reflected at serial No. 92 of the Notification dated 19.10.2001 specifying 'small quantity' and 'commercial quantity'. As per said Notification, 2.5 kg of opium or any preparation containing opium would constitute 'commercial quantity', whereas 'poppy straw' is reflected at

serial No. 110, wherein 'commercial quantity' would be 50 kg. In the instant case, total 7 kg 600 grams of 225 poppy plants have been recovered, out of which opium is yet to be derived and the FSL report is still awaited regarding the quantity of the opium derived from it. In the opinion of the Court, the weight of 7 kg 600 grams of 225 poppy plants would not exceed the commercial quantity from which opium would be derived.

Consequently, without going into the merits of the case and keeping in view the fact that the trial is likely to take some time to conclude, in the wake of outbreak of global pandemic, namely, COVID-19, the present petition is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds and surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned. Any opinion expressed herein is purely for the purpose of grant of regular bail.

However, before parting with this order, it is made clear that in case in the FSL report it is found that the opium that would be derived from 225 poppy plants weighs commercial or more than commercial quantity, the respondent—State would be at liberty to move for cancellation of the bail.

21.7.2020

prem

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No