

201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25087-2020
Date of Decision: 04.11.2020

Tarsem Singh @ Kala

... Petitioner

v/s

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Arjun Lakhanpal, Advocate for the petitioner.

Mr. H.S.Grewal, Addl. A.G. Punjab.

*(The case has been taken up through video conferencing on
account of Covid-19 pandemic)*

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VIVEK PURI, J. (ORAL)

The petitioner has prayed for grant of regular bail in case FIR No. 11 dated 22.1.2020, under Sections 15/61/85/25 of NDPS Act, registered at Police Station Kahnuwan, District Gurdaspur.

Briefly, the FIR has been registered in pursuance of the recovery of poppy husk which was being carried in 15 boxes each containing 8 packets of 1 Kg each.

It has been contended by learned counsel for the petitioner that only one packet from each box has been sent for chemical analysis and in such circumstances, at the most it can be said that the quantity of contraband recovered from the possession of the petitioner was to the extent of 15 Kg. There is nothing to suggest with regard to the contents of remaining seven packets in each of the 15 boxes i.e. 105 packets. It has been further stated that arrest of the petitioner was effected on 22.1.2020, the investigation of the case is complete, challan has already been presented in the Court and the conclusion of trial is likely to take some time.

Learned State counsel has not assailed the factual aspect of the

matter but has argued that the representative samples were sent as per the directions of the Court and furthermore, from the physical appearance of the remaining packets it can be made out that the contents of the parcel were that of poppy husk.

It may be mentioned here that it may not be appropriate to base the conclusion on the basis of physical appearance of the packets or texture, odour etc. of the contraband. The contents of the substance could be positively ascertained on the basis of the chemical composition after analysis by the Laboratory.

Furthermore, in **Gaunter Edwin Kircher Vs. State of Goa, Secretariat Panji, Goa; 1993 AIR (SC) 1456**, it has been laid down as follows:-

“We have to observe that to obviate this difficulty, the concerned authorities would do better if they send the entire quantity seized for chemical analysis so that there may not be any dispute of this nature regarding the quantity seized. If it is not, practicable, in a given case, to send the entire quantity then sufficient quantity by way of samples from each of the packets or pieces recovered should be sent for chemical examination under a regular panchnama and as per the provisions of law.”

The aforesaid decision has also been followed subsequently in **CRM-M-54384-2019; Saurabh Sabharwal @ Monu Vs. State of Punjab; decided on 07.01.2020.**

In these set of circumstances, it becomes debatable as to whether the quantity of contraband recovered from the possession of the petitioner falls in the category of commercial quantity or not. As such, without making any observation on the merits of the case, the ends of justice would be met if the petitioner is released on bail.

Accordingly, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

The petition is allowed.

04.11.2020

Janki

**(VIVEK PURI)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No