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

**CRM-M-26583 of 2020**
**Date of decision: December 01, 2020**

Kulwant Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

**Present:** Mr. Vivek K. Thakur, Advocate for the petitioner.
Mr. V.G. Jauhar, Senior DAG Punjab.

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**MAHABIR SINGH SINDHU, J**

Second petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for grant of pre-arrest bail to the petitioner, in FIR No.181dated 05.09.2019, under Sections 15 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Sidhwan Bet, District Ludhiana.

Short reply filed by way of affidavit dated 17.11.2020 of Charanjit Singh, IPS, Senior Superintendent of Police, District Ludhiana (Rural) is taken on record. Registry to tag the same at appropriate place.

Brief facts of the present case are that on 05.09.2019, ASI Gursewask Singh along with other police officials was present at the boundary of village Bhundri near Baani Filling Station for the purpose of patrolling and checking the vehicles. At about 7:30 P.M., a secret information was received to the effect that Pritpal Singh @ Prita, Manjinder Singh @ Bunty and Kulwant Singh (**petitioner**) were carrying hidden boxes filled with poppy-husk in truck Nos.RJ-31-GA-3389 and HR-46-B-4712. Suspects used

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to come from Jammu & Kashmir side and park the trucks at some unknown places or in Grain market, but after darkness, they would load the contraband in the black colour Scorpio which belongs to petitioner. Informant further revealed that few days earlier, accused had taken both the trucks to Jammu & Kashmir for bringing poppy-husk and if the raid is conducted from Bhundri side to GT Road at T-Point, near village Gorahoor, they could be apprehended along with the contraband. Finding the information credible, *ruqa* was sent to the police station for registering the FIR against all the above said accused.

It is contended on behalf of the petitioner that he has been falsely implicated merely on the premise that he is the registered owner of truck bearing Registration No.RJ-31-GA-3389. Further contended that as a matter of fact, above truck has already been rented out to co-accused-Manjinder Singh, who was arrested on the spot. Also contended that petitioner has no role in the present case and that is the reason that he was neither apprehended on the spot; nor any contraband was recovered from his conscious possession, thus, he has been falsely implicated by the police. Also contended that owner of the other truck bearing registration No.HR-46-B-4712, namely Shinderpal Singh, had also rented out his truck to Pritpal Singh and he has been declared innocent by the police, therefore, on parity, petitioner is also entitled for the similar treatment.

On the other hand, learned State counsel opposed the bail application and submitted that petitioner has been specifically named in the FIR and 360 k.g. of poppy-husk was recovered in this case which is commercial in nature and out of that 13 bags (20 k.g. each), i.e. 260 k.g. of

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poppy-husk was recovered from truck No.RJ-31-GA-3389. Also contended that petitioner is facing another criminal case under NPDS Act and he is the registered owner of truck No.RJ-31-GA-3389, but he escaped in his Scorpio from the place of occurrence after noticing the police barricade, thus, his custodial interrogation is very much necessary to go to the actual source of huge contraband.

Heard learned counsel for the parties and perused the paper-book.

There is no dispute that petitioner has been specifically named in the FIR and recovery in this case, is alleged to be 360 k.g. of poppy-husk which is of commercial quantity under the provisions of NDPS Act. Petitioner is the registered owner of truck No.RJ-31-GA-3389 which is alleged to be involved in carrying the contraband and 260 k.g. of poppy-husk was recovered from this truck; whereas, 5 bags (20 k.g. each), i.e. 100 k.g. of poppy-husk was recovered from truck No.HR-46-B-4712. As per allegations of the prosecution, petitioner was following the trucks while sitting in his Scorpio, but after noticing the barricade, he turned around and escaped from the spot. Concededly, petitioner is facing another case under NDPS Act and above all, his non-bailable warrants have already been issued by learned Judicial Magistrate Ist Class, Jagraon on two occasions, i.e. on 11.11.2020 and 17.11.2020, but he is successfully avoiding the arrest. Thus, petitioner cannot be said to be a law abiding citizen.

Although a plea was raised on behalf of the petitioner that Shinderpal Singh was also alleged to be the owner of truck No.HR-46-B-4712 and police declared him innocent; thus, insisting for the similar

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treatment, but that cannot be accepted for the simple reason that he (Shinderpal Singh) joined investigation without any delay and after satisfaction, Investigating Officer found him innocent.

As already discussed, non-bailable warrants of the petitioner have been issued twice, but police is not able to apprehend him; he is specifically named in the FIR, thus, cannot claim parity with Shinderpal Singh. Moreover, this Court while deciding the bail matter will not go into the roving enquiry; rather bound by the mandatory provisions of Section 37 of the NDPS Act and the same cannot be ignored.

In view of the facts and circumstances of the present case, no case is made out to record the satisfaction in favour of the petitioner in terms of Section 37 of the NDPS Act regarding twin test, i.e. (i) that there are reasonable grounds for believing that he is not guilty of the offence alleged against him and (ii) that he is not likely to commit any offence while on bail.

In view of the above discussion, there is no option except to dismiss the petition.

Ordered accordingly.

The above observations may not be construed as an expression of opinion on the merits of the case.

Pending application(s), if any, shall also stand(s) disposed off.

**(MAHABIR SINGH SINDHU)**
**JUDGE**

**December 01, 2020**
mahavir
Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No

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