

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-36061 of 2019

.....

Date of decision:30.01.2020

Jagsir alias Ghuaghru

...Petitioners

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Ashok Kumar Verma

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Present: Mr. Amit Choudhary, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana
for the respondent-State.

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Ashok Kumar Verma, J.

The petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.406 dated 15.07.2016 registered for the offences under Sections 15 and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and Sections 147, 149, 332, 353, 186, 224 and 225 IPC at Police Station Ratia, District Fatehabad.

The brief facts of the case are that on 15.07.2016, during the course of *Nakabandi*, the petitioner came on a car from the side of Ratia, who on seeing the police party turned the car towards the village and police personnel chased him. When the Police party reached near the house of the

petitioner, he was found entering his house after unloading the bags from the car. On hearing the call of Police party, he tried to run away. When the Police party tried to overpower him, his wife Nisha and several other co-accused gathered at the spot and attacked upon them and helped Jagsir Singh in running away. On checking room, 12 bags containing Poppy Husk were recovered, out of which 6 bags were containing 20 Kgs. each, seventh bag was containing 10 Kgs., four bags were containing 13 Kgs. and one another bag was containing 8 Kgs. Poppy Husk. After separating two samples of 100 Grams each from each bag, the sample parcels and bags were taken into possession. The petitioner was arrested on 19.11.2018.

Learned counsel for the petitioner argued that the petitioner is innocent and has been falsely implicated in this case and he has been in custody since 19.11.2018. He further contended that there was non-compliance of mandatory provisions under Section 50 of the NDPS Act. The petitioner was not apprehended at the spot. He further contended that no independent witness was joined.

On the other hand, learned State counsel argued that after seeing the Police party, the petitioner absconded from the spot, hence the conduct of the petitioner is suspicious. Learned State counsel during the course of hearing placed on record a list of cases lying registered against the petitioner. He further argued that as per this list several cases of drug trafficking under NDPS Act had been lying registered against the petitioner and in some of the cases he has been convicted, hence he is a habitual offender. He further argued that the petitioner has been found in possession

of Poppy Husk which falls within the category of commercial quantity.

I have heard learned counsel for the petitioner and learned State counsel and have gone through the record.

As per the prosecution version, 190 Kgs. of Poppy husk was recovered from the room of the petitioner, who was actively involved the work of transportation of narcotics. The alleged recovery of contraband falls under the category of 'commercial quantity'.

Hon'ble Supreme Court in **State of Kerala Etc. Vs. Rajesh Etc., Criminal Appeal No(S).154-157 of 2020**, (decided on 24.01.2020) has observed as under:-

“20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

[4]

Keeping in view the serious nature and gravity of the offences and recovery of alleged quantity of contraband; he is habitual offender and several cases of drug trafficking are lying registered against him and in some of the cases he has been convicted and also in view the above law laid down by the Hon'ble Supreme Court, the bar of Section 37 of the NDPS Act will apply in this case, hence I do not deem it a fit case for the grant of concession of bail to the petitioner.

Therefore, in view of the above discussion, I do not find any merit in this petition and the same is dismissed.

January 30, 2020.

(Ashok Kumar Verma)
Judge

hsp

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