IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

108 **CRM-M-2245-2021 (O&M).**
Date of Decision: 22.04.2021.

Rahim Khan ....Petitioner

Versus

State of Haryana ....Respondent

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CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ashit Malik, Advocate for the petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

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Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

CRM-1130-2021

Allowed, as prayed for.

CRM-M-2245-2021

This petition under Section 439 Cr.P.C has been moved by petitioner-**Rahim Khan** for grant of regular bail in case FIR No.436 dated 13.11.2020 under Section 15 of NDPS Act (Sections 27-A and 29 of NDPS Act added lateron), registered at Police Station Ladwa, District Kurukshetra.

Reply dated 19.04.2021 by way of affidavit of Bharat Bhushan, HPS, Deputy Superintendent of Police, Ladwa, District Kurukshetra, already filed on behalf of respondent-State, is taken on record.

Learned counsel for the petitioner *inter alia* contends that the allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that petitioner was not named in the FIR. He further urges that allegedly vehicle in question (Truck) bearing registration No.HR-58B-7005 was being driven by co-

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accused Rehman Khan and since alleged recovery of contraband (Poppy Husk) was effected from the cabin of Truck, petitioner-Rahim Khan, being Cleaner of the Truck, was not having any knowledge as to what kind of article was lying in the cabin of the Truck. He further submits that in view of above, alleged recovery of contraband (Poppy Husk) cannot be said to be effected from the conscious possession of petitioner. He further urges that neither any independent witness was joined during the course of alleged recovery nor requisite notice as envisaged under Section 50 of NDPS Act was served upon the petitioner. Learned counsel while relying on the report dated 03.12.2020 (Annexure A/1) prepared and submitted by Anti Narcotic Cell, Kurukshetra, during the course of hearing of bail application of present petitioner, which is taken on record, submits that a bare perusal of said report it transpires that contraband alongwith bag was weighed on computerized weighing scale and the total weight thereof came to 50 Kgs.—700 grams. He further urges that the nature of cloth of bag has not been mentioned therein and the weight of bag in exclusive may vary from 500 grams to 1 Kilogram and in that eventuality actual weight of contraband shown to be 50 Kgs.—700 grams may differ and as such alleged recovery of contraband would be less than 50 Kgs., which is non-commercial quantity. He further submits that in respect of Poppy Husk, it has been specifically mentioned at Sr. No.110 of the Table as per sub-clause vii(a) and xxiii(a) of Section 2 of the NDPS Act that commercial quantity would start in respect of said contraband weighing more than 50 Kgs. He further urges that in view of above, once the exact weight of contraband is not forthcoming on the record, benefit qua that fact may be granted to the petitioner. He further urges that petitioner is in custody since 13.11.2020 and he is no more

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required by the Police for any investigation purpose. He further submits that after completion of investigation, *Challan* has already been presented in the Court and since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that keeping in view seriousness of offence, petitioner does not deserve the concession of bail.

I have heard learned counsel for the parties and have gone through the contents of petition as well as documents available on record.

At this stage, without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that petitioner is in custody since 13.11.2020; that petitioner is no more required by the Investigating Agency for investigation purpose; that *Challan* has already been presented in the Court and since trial of the case would take sufficient time to conclude, no useful purpose would be served by detaining the petitioner in custody further, thus, he deserves the concession of bail.

In view of above, instant petition for grant of regular bail moved by petitioner-**Rahim Khan** is allowed and he is ordered to be released on bail on his furnishing personal/surety bonds to the satisfaction of Trial Court/ Chief Judicial Magistrate/Duty Magistrate, Kurukshetra, as the case may be.

(LALIT BATRA)
JUDGE

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