

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

CRM-M-12045-2021 (O&M)
Date of Decision:- 19.3.2021

Krishan

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Parminder Singh, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana
assisted by ASI Rajbir Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.372 dated 25.12.2020 under Sections 18/21 of NDPS Act at Police Station Nissing, District Karnal.
2. As per the case of the prosecution, a secret information was received by ASI Rajinder Singh to the effect that Krishan (petitioner) was possessing huge quantity of mixture containing liquid form of opium and other intoxicating substances which in local language is referred to as '*Gattu*'. Pursuant to receipt of said information, a raiding party was constituted and barricading was held and the petitioner was apprehended by the police who was found to be carrying some liquid contraband in a plastic can, which as per the case of prosecution contained opium in liquid form and other intoxicant

substances. The said contraband upon being weighed was found to be 7 litres.

3. The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in the instant case and in any case since the police did not adhere to the requisite safeguards at the time of recovery and drawing of samples, no sanctity can be attached to the alleged recovery. The learned counsel in this regard has drawn the attention of this Court to Para 3 of order dated 22.2.2021 (Annexure P-2), which reads as follows :-

“ASI Rajbir Singh-CIA-I/Investigating Officer on 19.2.2021 filed an application in this Court praying therein that papers be sent back to the court of learned Illaqa Magistrate of Police Station Nissing for preparation of sample parcel as per requirement of FSL Madhuban. Alongwith an application a letter dated 17.02.2021 of FSL has been attached vide which sample parcel has been returned by FSL with these remarks “Returned with remarks that kindly sealed parcel properly with a (cloth pauch). Parcel is found in the open state P1.”

4. The learned counsel, while referring to the aforesaid paragraph, has submitted that since the sample parcels in question were not found to be properly sealed and were infact open, no sanctity will be attached to any report of Chemical Examiner and that holding of a trial in such circumstances would be an exercise in futility.
5. Opposing the petition, the learned State counsel has submitted that it will be a matter of evidence as to whether all the safeguards at the time of recovery had been adhered to or not and that it is premature at this stage to say that no recovery was effected from the petitioner or that the contraband was not sealed properly. The learned State counsel has further informed that the

petitioner is a habitual offender having been involved in 7 other cases. The learned State counsel has, however, informed that the petitioner as on date has been behind bars since the last about 3 months and that challan already stands presented.

6. I have considered rival submissions addressed before this Court.
7. Having regard to the fact that the sample parcels *prima facie* were found to be in an open state, it will certainly cause a dent in the case of prosecution and the recovery will be rendered doubtful as the prosecution will not be able to establish that the recovered contraband was not tampered with in any manner after the same was recovered.
8. In these circumstances, the petition is hereby accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
9. It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

19.3.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No