

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

CRM-M-16474 of 2021 (O&M)

DATE OF DECISION: 30.04.2021

Mohd. Dilshad

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

**Present : Ms. Amandeep Kaur Gill, Advocate,
for the petitioner.**

Mr. Amit Mehta, Sr. DAG Punjab.

(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. This is second foray of the petitioner before this Court seeking regular bail in FIR No. 165 dated 18.07.2020, registered under Section 15 of Narcotic Drugs and Psychotropic Substances Act(for brevity, NDPS), Police Station Bhogpur, District Jalandhar Rural, first being CRM-M-27802 of 2020 dismissed on 18.09.2020.

2. Per FIR, on 18.07.2020, a police party received secret information that present petitioner along with Asgar Ali, Mohd. Aasif, Saminder Singh and Mohd. Jamil were indulging in transport of narcotic substance from Jammu and Kashmir. Pursuant thereto, barricades were laid and two vehicles i.e. a truck bearing registration No. PB13AB-4637 and car No. HR26K-5711, were intercepted. On recovery of 30 Kgs of poppy husk from car and 80 Kgs from the truck, respectively, petitioners and co-accused were apprehended/arrested. Petitioner herein was occupant of the car which carried 30 kgs poppy husk.

3. The petitioner is stated to be in custody since 18.07.2020.

4. Learned counsel for petitioner submits that neither the petitioner is owner of the truck nor of the car from which the poppy husk was recovered. The petitioner has been falsely implicated in the present case. Nothing was recovered from the conscious possession of the petitioner. He was merely occupants of the car from which alleged recovery of 30 kgs of poppy husk was effected. The alleged recovery falls within non-commercial quantity. The Court below has wrongly invoked the provisions of Section 37 of the Act.

5. She further submits that there has also been violation of mandatory provisions of NDPS Act. The complainant himself is the investigating officer of the case, which is not permissible as per law.

6. Learned counsel for the petitioner further submits that the petitioner is not having any criminal antecedents. He is not involved in any other case.

7. She further points out that similarly situated co-accused Asgar Ali @ Sunny and Mohd. Aasif have already been accorded the benefit of bail vide order dated 04.03.2021 passed in CRM-M-4591 of 2021 and CRM-M-7575 of

2021 respectively, and on the ground of parity, the petitioner is entitled to the same relief.

8. Per contra, learned State counsel opposes the bail plea. He submits that the whole quantity of contraband has to be collectively taken into account. Total quantity being 110 Kgs, falls within commercial quantity. According to him, rigors of Section 37 of NDPS Act would attract to the case of petitioner, which prohibit of grant of bail in case of recovery of commercial quantity.

9. I have heard the rival contentions of the respective learned counsels.

10. The contentions of learned counsel for petitioner, as noted aforesaid, may have substance but same can only be adjudged at the trial. Since investigation is already over and charges have been framed, the case before the trial court is now fixed for prosecution evidence. The trial is not likely to conclude soon in view of the situation arisen due to pandemic.

11. All the prosecution witnesses are police officials. There thus seems no apprehension that petitioner would influence or pressurize the witnesses.

12. It is also a debatable question as to whether the recovery was effected from the conscious possession of the petitioner, who claims to be mere occupant of the car from where 30 Kgs of poppy husk was recovered.

13. Admittedly, petitioner is not involved in any other criminal case of similar nature or even otherwise.

14. Petitioner is no more required for any further custodial interrogation. Trial of the case will take long time in view of delays being caused by current pandemic.

15. Owner of the offending truck has already been enlarged on bail. Apart therefrom, similarly situated co-accused, namely, Asgar Ali @ Sunny and Mohd. Aasif have already been accorded the benefit of regular bail. On the ground of parity, the petitioner is entitled to the same relief.

16. Considering the overall scenario, without commenting on the merits of the case, the petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

17. Accordingly, petitioner shall be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/ Duty Magistrate, as the case may be.

18. It is, however, made clear that in case the petitioner is found involved in any other case of similar nature while on bail, the prosecution shall be at liberty to seek cancellation of his bail.

(ARUN MONGA)

April 30, 2021

JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No