

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

106+234

**CRM-17573-2021 in/and
CRM-M-21183-2021
Date of Decision:16.08.2021**

Rahman Khan

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ashit Malik, Advocate for petitioner.

Mr. Rajiv Sidhu, Deputy Advocate General, Haryana.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

CRM-17573-2021

This is an application under Section 482 Cr.P.C. for placing on record document Annexure P/3 as well as for exemption from filing certified copy thereof.

Document (Annexure P/3) is taken on record, subject to all just exceptions.

CRM is allowed.

Main Case

This petition under Section 439 Cr.P.C has been moved by petitioner-**Rahman 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 08.07.2021 by way of affidavit of Bharat Bhushan, HPS, DSP, Ladwa, along with Annexure R/1, 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 allegedly Truck bearing registration No.HR-58B-7005 was being driven by petitioner and since alleged recovery of contraband (Poppy Straw) was effected from the cabin of said truck, petitioner-Rahman Khan was not having any knowledge as to what kind of article was lying in the cabin of the truck especially in view of the fact that he is not owner of said truck. He further submits that in view of above, alleged recovery of contraband (Poppy Straw) 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. He further urges that during the course of hearing of bail application (CRM-M-2245-2021) of co-accused-Rahim Khan decided on 22.04.2021 (Annexure P/2), copy of report dated 03.12.2020 (Annexure A/1 thereon) prepared and submitted by Anti Narcotic Cell, Kurukshetra, was placed on record and a perusal of order dated 22.04.2021 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 vary 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 contraband (Poppy Straw), it has been specifically mentioned at serial No.110 of the Table in terms of 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 submits that co-accused namely Sanjay Kumar and Rahim Khan have already been extended the concession of regular bail by this Court, vide orders dated 29.01.2021 and 22.04.2021 passed in CRM-M-40805-2020 and CRM-M-2245-2021 respectively. He further urges that petitioner is in custody since 13.11.2020 and he is no more required by the Police for any investigation purpose. He further submits that after completion of investigation, final report under Section 173 Cr.P.C. (*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 co-accused namely Sanjay Kumar and Rahim Khan have already been extended the concession of regular bail by this Court, vide orders dated 29.01.2021 and 22.04.2021 passed in CRM-M-40805-2020 and CRM-M-2245-2021 respectively; 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-**Rahman 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

16.08.2021

Varinder Prashad

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No