

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

(Heard through VC)

CRR No.3228 of 2019 (O&M)
Date of Decision: November 23rd, 2021

Deepak

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Kuldeep Tiwari, Addl. AG Haryana.

JAISHREE THAKUR, J.

1. The instant criminal revision has been filed seeking to challenge the impugned order dated 27.05.2019 passed by the trial court whereby, the application filed by the petitioner herein for releasing the poppy seeds on *superdari* has been dismissed.

2. In brief, the facts of the case are that an FIR No.257 dated 04.07.2017 was registered under Sections 15 and 29 of the NDPS Act and Sections 420, 467, 468, 471 of Indian Penal Code at Police Station Kundli, Sonapat wherein, the poppy seeds weighing 70950 kgs were recovered from the premises of Factory No.304, Industrial Area, Kundli. The petitioner herein along with other co-accused were doing a legal business in the name

of M/s Shree Shree Enterprises at the aforesaid factory in which dalhan, rice, food grain, poppy seeds and oil seeds were processed. The petitioner herein moved an application for releasing the poppy seeds on *superdari* before the trial court, however, the same came to be dismissed by the impugned order dated 27.05.2019, which order is assailed by the petitioner in the instant criminal revision.

3. Learned counsel appearing on behalf of the petitioner would contend that the recovery of poppy seeds does not come under the ambit of NDPS Act and the same is not required by the police any more. It is submitted that poppy seeds are perishable in nature and will be spoiled with the passage of time. It is contended that recovery of alleged poppy husk was effected from outside the premises of the factory and the poppy seeds were recovered from the premises of the factory, which is lawfully authorized to do the business of food products. It is submitted that the poppy seeds are used in so many food items, sweets and other products, but the trial court did not consider this fact and dismissed the application of the petitioner illegally and arbitrarily.

4. Per contra, learned counsel appearing on behalf of the respondent-State would submit that the trial court has rightly dismissed the application of the petitioner for releasing the poppy seeds on *superdari*, as there are allegations and evidence of recovery of huge quantity of poppy husk weighing 2140 kgs in the present case.

5. I have heard learned counsel for the parties and have also gone through the pleadings of the case.

6. The trial court has dismissed the application of the petitioner by

observing as under;-

“7. In the case in hand, there are allegations of recovery of huge quantity of poppy husk weighing 2140 K.G. and although, it is true that poppy seed is not a Narcotic Drug/Psychotropic substance, but there is strong suspicion that the accused were involved in manufacturing of poppy husk by bringing raw material in the factory, since vehicle bearing registration No.MP44-GA-1168 was apprehended after it emerged from the factory premises, gives rise to an interference that contraband was loaded in the factory premises. Due to this reason the charge under Section 15 of the NDPS Act for producing and transporting poppy straw read with Section 120-B of IPC has been framed against the accused persons.

8. Under these circumstances, the request to release poppy seeds on superdari stands declined and the application for superdari is accordingly dismissed.”

7. Section 2 (xviii) of the NDPS Act read as under;-

2 (xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom.

8. In the case of *Ajaib Singh and another vs. State of Punjab*, Criminal Appeal No.361 of 2000, decided on 11.04.2000, the Apex Court has observed that the terms “poppy straw” includes all parts (except the seeds) of the “opium poppy”. “Opium poppy” means the plant of the species *Papaver*. Thus, except for the seed, all other parts of the plant of the species *Papaver* would fall in the terms “poppy straw” and that parts of the

plant *Papaver* would fall within the terms “poppy straw” even though no juice has been extracted therefrom. It was further observed by the Apex Court that Modi's Textbook of Medical Jurisprudence & Toxicology says that a poppy seed is used in foods, sprinkled over sweets and also yields a bland oil, which is used for culinary and lighting purposes. It is because of this that a seed has been excluded from the definition of poppy straw. Poppy seed could be used in food or Indian sweets or made into oil, which largely used for culinary and lighting purposes only after it is dehusked. Thus, the seed would be separated from the husk. xxx xxx xxx.

9. In the case in hand, there are allegations that recovery of huge quantity of poppy husk weighing 2140 kgs was effected from the vehicle after it emerged from the factory premises of the accused persons, besides recovery of 70950 kgs of poppy seeds from the factory premises of the accused persons. After going through the definition of “poppy straw” as defined in Section 2 (xviii) of the NDPS Act and in view of the observations made by the Apex Court in the case of *Ajaib Singh and another vs. State of Punjab (supra)*, it is clear that poppy seed has been excluded from the definition of “poppy straw” as the same is used in food and Indian sweets or made into oil, which is largely used for culinary and lighting purposes after it is dehusked. Under these circumstances, the impugned order passed by the trial court in dismissing the application of the petitioner for releasing the poppy seeds on *superdari* cannot be held good in the eyes of law and the same is liable to be set aside. Therefore, the impugned order dated 27.05.2019 passed by the trial court is hereby set aside and the poppy seeds recovered in the present case are ordered to be

released to the petitioner herein on *superdari* on his furnishing the adequate *superdiginama* with appropriate surety to the satisfaction of the trial Court/Duty Magistrate concerned.

10. The instant criminal revision stands allowed accordingly. However, the matter as being decided pertains to *superdari* of 'poppy seeds' and not on merits of the FIR.

November 23, 2021
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No