

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13771-2022
Reserved on: 06.04.2022
Pronounced on:07.05.2022

Gogi Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Anmol, Advocate for
Mr. K.S. Brar, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
20	06.02.2022	Sadar Kabarwala, District Sri Muktsar Sahib	15 (b) of NDPS Act

1. The petitioner, incarcerated upon his arrest for possessing an intermediate quantity of poppy husk, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has come up before this Court under Section 439 of Cr.P.C, seeking bail.

2. In paragraph 8 of the bail application, the accused declares the following criminal antecedents:

Sr. No.	FIR No.	Dated	Offences	Police Station
1.	56	04.07.2018	15 of the NDPS Act	Bariwala
2.	41	14.04.2021	15 of the NDPS Act	Bajakhana

3. On Feb 6, 2022, based on suspicion, the police party on patrolling duty searched the petitioner, which led to the recovery of 25 kg of poppy husk.

4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. While opposing the bail, Ld. counsel representing the State contends that given the criminal past, the accused is likely to indulge in crime once released on bail.

REASONING:

6. In Paramjeet Singh v. State of Punjab, CRM-M 50243 of 2021, this court observed,

While considering each bail petition of the accused with a criminal history, it throws an onerous responsibility upon the Courts to act judiciously with reasonableness because arbitrariness is the antithesis of law. The criminal history must be of cases where the accused was convicted, including the suspended sentences and all pending First Information Reports, wherein the bail petitioner stands arraigned as an accused. In reckoning the number of cases as criminal history, the prosecutions resulting in acquittal or discharge, or when Courts quashed the FIR; the prosecution stands withdrawn, or prosecution filed a closure report; cannot be included. Although crime is to be despised and not the criminal, yet for a recidivist, the contours of a playing field are marshy, and graver the criminal history, slushier the puddles.

7. The substance involved in the present case is poppy husk, and weighs 25 kilograms. Entry no. 110 of the table specifying small and commercial quantities specifies the quantity greater than 50 kilograms as commercial quantity and lesser than 1000 grams as small. Thus, the quantity involved is intermediate.

8. Before the present FIR, the petitioner was involved in similar cases. The quantity recovered in such cases was 3 kg of poppy, which comes to around 6% of commercial quantity, and 28 kg of poppy, which comes to around 56 % of its commercial quantity. In the present case, the quantity recovered is 25 kg of poppy husk, representing 50% of the commercial quantity. Thus, when compared with commercial quantities prescribed under respective entries, the total quantity exceeds the upper limit. Although section 37 of the NDPS Act does not apply to the previous recoveries, yet the grant of bail in the intermediate is not a matter of right but must be given after considering the previous criminal history. A perusal of the petition does not refer to any averment based on which this court is assured that if this recidivist is released on bail, then he shall not indulge in criminal behavior.

9. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for bail at this stage. However, it shall be open for the petitioners to file new bail application(s) in changed circumstances or after recording the statements of witnesses other than formal witnesses, whichever is earlier. If the statements mentioned above are not recorded within six months, the petitioner may file a fresh bail petition on the grounds of prolonged custody. The dismissal of this petition shall not come in the way while considering the fresh petition(s).

10. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

07.05.2022

Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	Yes.