

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

CRM-M-16252-2022 (O&M)

Date of Decision: 02.09.2022

Jagtar Singh @ Tari

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Parminder Singh Sekhon, Advocate, for the petitioner.
Mr. Ramdeep Partap Singh, Sr. D.A.G., Punjab.

VIKAS BAHL, J. (Oral)

1. This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No. 73 dated 19.06.2021, under Section 15-C of the NDPS Act, 1985, registered at Police Station Dayalpura, District Bathinda.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 18.09.2021 and the investigation is complete and the '*challan*' has been presented and there are 12 witnesses none of whom has been examined and thus, the trial is likely to take time. It is further submitted that in present case, the FIR was registered by stating that the petitioner was carrying two bags weighing 52 kgs total (26 kgs each) of poppy husk on his motor-cycle. It is contended that the weight of the said bags, which are alleged to have contained poppy husk also included the weight of the bags themselves and thus, the actual quantity of the poppy husk even as per the case of the prosecution, is lesser than 52 kgs. It is submitted that as per the '*challan*' two samples were taken which were of 250 grams of

poppy husk each, from the said two bags, thus totaling it to ½ kg and further, 24 kgs of poppy husk from each bag was deposited in the NDPS Godown at Bathinda. It is thus, argued that as per the '*challan*' the total quantity would amount to 48 ½ kgs and would fall within the ambit of non-commercial quantity and thus, the bar under Section 37 of the NDPS Act would not apply.

It is further submitted that in the present case as per the case of the prosecution, the petitioner was apprehended on account of a chance recovery and his motor-cycle fell down on the ground and the poppy husk from one of the bags had scattered all over on the road and the said poppy husk was put into 2 plastic bags by the police officials. The second plastic bag was allegedly attached to the motor-cycle. It is submitted that the question as to whether or not the petitioner could be stated to be in conscious possession of the poppy husk which was recovered from the road, would be a matter of debate, which would be finally adjudicated during the course of the trial. On the said aspect, the petitioner has relied upon a decision of a co-ordinate Bench of this court in CRM-M-16150-2021, dated 19.07.2021, titled as Balwinder Singh vs. State of Punjab and on judgment in CRM-M-33733-2020, dated 15.03.2021, titled as Manjit Singh vs. State of Punjab. It is also submitted that in the present case, the petitioner had not signed the recovery memo.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the present petition is involved in one more case under the NDPS Act and is thus, an habitual offender and does not deserve the concession of regular bail.

4. Learned counsel for the petitioner in rebuttal has submitted that the petitioner is on bail in the said case and has also submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application and for the said proposition, learned counsel for the petitioner has relied upon judgment passed by the Hon'ble Supreme Court in case titled as **Maulana Mohd. Amir Rashadi Vs. State of U.P. and others** reported as **2012 (2) SCC 382** and reference has been made to the relevant portion of paragraph 6 which is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. The petitioner is in custody since 18.09.2022, the investigation is complete and the 'challan' has been presented and out of the total 12 witnesses, none have been examined and thus, the trial is likely to take time.

7. It has not been disputed that as per the report under Section 173 of the Cr.P.C., the quantity of the contraband recovered from the bag in the present case is 48 ½ kg, which is lesser than the stipulated commercial quantity, which starts at 50 kgs for poppy husk and thus, the bar under Section 37 does not apply.

8. The question whether the recovery of the poppy husk from one

of the bags, which as per the case of the prosecution had fallen on the road and was collected by the police, could be considered to have been effected from the conscious possession of the petitioner or not, would be a matter of debate which would be finally adjudicated during the course of the trial.

9. Keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

10. However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

11. Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

12. Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

September 02, 2022

nitin

Whether speaking/reasoned
Whether Reportable

(VIKAS BAHL)

JUDGE

Yes
No