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

CRM-M-16191-2022
Date of decision: 21.04.2022

KEWAL SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The instant petition has been filed under Section 438 of Cr.P.C., wherein the present bail petitioner seeks indulgence of anticipatory bail.

2. In FIR No.91 of 30.03.2022, registered at Police Station Amargarh, District Malerkotla, an offence constituted under Section 18 of NDPS Act, 1985, is embodied.

3. The incriminatory role, as is assigned to the present bail petitioner, is of his cultivating poppy in his fields, and, upon the investigating officer concerned, visiting the fields owned by the present bail petitioner, his after uprooting therefrom green poppy plants, his weighing them on the weightment scale, and, narrating in the seizure memo, qua theirs carrying a weight of about 20 kgs.

4. The learned State counsel vehemently opposes, the grant of anticipatory bail to the present bail petitioner, on the ground, that the above

weight of the poppy plants, as became uprooted from the fields, owned by the present bail petitioner, rather makes it fall within the ambit of commercial quantity thereof.

5. However, for the reasons to be assigned hereinafter, the afore made contention is rejected. The primary reason for rejecting the afore made contention is derived from the factum, of this Court, keenly reading the mandate carried in Section 18 of the NDPS Act, provisions whereof stands extracted hereinafter, wherein though there is a clear statutory prohibition against cultivation of opium poppy. Moreover, also therein the variant quantum(s) of punishment(s) rather becomes prescribed, with respect to the cultivated poppy, respectively carrying weight(s) upto commercial quantity thereof, intermediate quantity thereof, or small quantity thereof. The implication is that, this Court becomes enjoined to determine, whether the green poppy plants, as became uprooted from the fields of the present bail petitioner, and, weight whereof is 20 kgs, makes the afore to rather fall within the ambit of commercial quantity thereof, intermediate quantity thereof, or small quantity thereof.

*“18. **Punishment for contravention in relation to opium poppy and opium.**—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—*

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to [one year], or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

*Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;
(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.]”*

6. In making the afore determination it is important to refer to the definition of “poppy straw” as exists in Section 2(xviii) of the NDPS Act, provisions whereof stands extracted hereinafter.

“(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.”

7. A reading of the above extracted provisions carried in Section 2(xviii) of the NDPS Act, clearly reveal, that the definition assigned to “poppy straw”, includes therein all parts except seeds of the opium poppy, after harvesting, whether in their original form or cut, and/or crushed or powdered besides, also includes takes within the definition of “poppy straw”, any poppy plant whether or not juice has been extracted therefrom. Therefore, bearing in mind the afore definition assigned to poppy straw, hence renders, the cultivation of green poppy plants by the bail petitioner in his fields, to be penally inculpable, even when after theirs becoming uprooted therefrom, by the investigating officer concerned, and, though yet the juice(s) therein being not extracted therefrom. Reiteratedly seizure of uprooted green poppy plants, irrespective of the fact, whether juice has been or not extracted therefrom, makes them/it to fall within the definition of “poppy straw”.

8. Consequently, this Court is enjoined to refer to the relevant table appertaining to poppy straw, wherein occur narrations qua the commercial, non-commercial or intermediate quantity thereof, for, hence the rigors of Section 37 of the NDPS Act, being made attractable thereons or

not being attractable thereons.

9. Consequently, upon referring to the apposite notification appertaining to the relevant weight of poppy straw, it is unfolded, that the commercial weight of poppy straw is 50 kgs. However, when for reasons (supra), the green poppy plants, as reared in his fields by the present bail petitioner, and, which became uprooted therefrom, also make them fall within the ambit of the definition of “poppy straw”, and, when weight thereof is about 20 kgs. As a sequel, the above weight of the relevant seizure, makes it fall outside the ambit of commercial quantity thereof, as, it is less than 50 kgs.

10. In aftermath, since the weight of the seized green poppy straw falls outside the ambit of commercial quantity thereof, and, when, obviously the rigors of Section 37 of the NDPS Act are not made applicable thereons.

11. Therefore, there is merit in the present bail petition, and, is allowed. The present bail petitioner is admitted to anticipatory bail, and, in the event of the arrest of the bail petitioner, by the arresting officer, the latter shall release him, subject to his furnishing personal and surety bonds in the sum of Rs.50,000/- each, to the satisfaction of the arresting officer. Moreover, the bail applicant shall also give an undertaking to the investigating concerned that, as and when he is summoned through a written *hukamnama*, served upon him, he shall ensure his rendering co-operation to the investigating officer concerned.

(SURESHWAR THAKUR)
JUDGE

21.04.2022

Ithlesh

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No