

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-18795-2022

Date of Decision:-28.07.2022

Avtar Singh.

.....**Petitioner.**

Versus

State of Punjab.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Amandeep Singh Manaise, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 439 Cr.P.C. Is for the grant of regular bail to the petitioner in case bearing FIR No.16 dated 14.03.2022 under Sections 15/18 of the NDPS Act registered with Police Station Bhaini Mian Khan, District Gurdaspur.

2. The brief facts of the case are that a secret information was obtained by the investigating officer that Avtar Singh son of Jasbeer Singh, the present petitioner had taken one acre of land on lease from Dr. Kala, resident of Aulakh for a period of three years and lives in a Dera. He has sown Mustard in that field and in some rows, he has sown green poppy plants. If a raid was conducted, green poppy plants could be recovered in heavy quantity.

3. Based on the said information, a raid was conducted in the fields of the petitioner, where the police party found that green poppy plants are standing in the Mustard fields. The said green poppy plants were uprooted, put in a plastic bag and on weighment, came to be 5 Kg. Including the plastic bag. Resultantly, the petitioner was arrested and the abovesaid

FIR was registered against him.

4. The learned counsel for the petitioner contends that as per the NDPS Act, “opium poppy” is defined in Section 2(xvii) as follows:-

“ opium poppy means---

- a) The plant of the species Papaver somniferum L; and*
- b) The plant of any other species of Papver From which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act.”*

Section 18 of the NDPS Act prescribes the Punishment in relation to opium poppy and opium is reproduced as follows:-

“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 for condition of license 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 rupee.

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”.

5. As per the learned counsel for the petitioner, the alleged recovery is of green poppy plant which is a growing plant and it would

grow till the stage of germination and harvesting, and thus, there is no measure of small quantity or commercial quantity for opium poppy. Consequently, an offence for cultivating opium poppy would be only covered by Section 18(c) of the NDPS Act and because of this reason, opium poppy is not mentioned in the table appended to the Act specifying the small and commercial quantities. Therefore, the recovery of any quantity of opium poppy would have been covered under non-commercial quantity and in these circumstances, the bar of Section 37 of the NDPS Act would not apply in the instant case.

6. The learned counsel for the petitioner relies upon the judgments passed in the cases of “***Gurcharan Singh versus State of Haryana (CRM-M-15417-2015 decided on 05.10.2016)***” and “***Amrik Singh versus State of Haryana (CRM-M-13254-2020 decided on 09.07.2020)***”.

7. Notice of motion.

8. Mr. Kirat Singh Sidhu, DAG, Punjab, who is present in the Court, accepts notice on behalf of the respondent-State. He opposed the prayer for the bail stating that such kind of offences are on the rise and the petitioner does not deserve the concession of bail.

9. I have heard the learned counsel for both the parties.

10. This Court in the case of Gurcharan Singh (supra) has held as under:-

“ Counsel for the petitioner has argued that the petitioner has been in custody for about four months. Bail application of the petitioner has been rejected by the trial Court holding that the quantity recovered is commercial quantity. As per the learned counsel, this is a complete mis- interpretation of the NDPS Act (for short “the Act”). Section 18 of the Act deals with offences related to opium and opium poppy. The same is quoted as below:-

“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 interState, 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 six months, 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.”

Counsel for the petitioner has argued that there is no measure of small quantity or commercial quantity for opium poppy because it is in fact a growing plant and would be so even at the stage of germination and till the stage of harvesting. Consequently, an offence for cultivating opium poppy would only be covered by Section 18-C of the Act. In the Table annexed with the Act it is clarified that with respect to cultivation of opium poppy the expression 'small quantity' and 'commercial quantity' is not relevant and the offence is to be covered under Section 18-C of the Act and, therefore, recovery of any quantity of opium poppy would have to be covered under non commercial quantity. I find this to be so. I, however, find that very interestingly there is similar provision with regard to cannabis plant and cannabis viz Section 20 of the Act, which is quoted as below :-

“20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable; (I) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one

lakh rupees; and

(ii) where such contravention relates to sub-clause (b),

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and 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 but 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.”

In respect of cannabis plant no separate provision has been made in the notification. However, on drawing an analogy with the provision relating to opium poppy, it would have to be held that for the seizure of cannabis plant also, the quantity would fall within non-commercial quantity despite the fact that there is no provision therefor in the Schedule.

Coming back to the present case, in my opinion, once it is held that recovery of opium poppy has to necessarily fall within the ambit of non-commercial quantity, bar of Section 37 of the Act would not apply and keeping in view the recovery (12 kgs) and the period of custody undergone by the petitioner, I do not deem it appropriate to deny the concession of regular bail to the petitioner. Bail to the satisfaction of the trial Court/Duty Magistrate. CRM-M No.15417 of 2015 stands disposed of.”

The aforesaid judgment has been followed by this Court in the case of Amrik Singh (supra).

11. Keeping in view the dictum laid down in the aforesaid judgments, the petitioner was released on interim bail to the satisfaction of

the Trial Court/Duty Magistrate concerned, till the receipt of the FSL report vide order dated 11.05.2022 and the case was adjourned to today i.e. 28.07.2022.

12. The learned Counsel for the State has placed on record the FSL report (Chemical Examiner report) as per which the extract was containing alkaloids and Meconic acid and those are present in poppy plant.

13. Thus it is apparent that the recovery in the present case was of poppy plant which would entitle the petitioner to the grant of bail.

14. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner **Avtar Singh** son of Sh. Jasbeer Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

July 28, 2022

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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>