

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

212

CRM-M-19400-2022
Date of decision : 22.11.2022

Phool Sahai Kahira @ Fulsay Kahara

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Munish Puri, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for grant of regular bail in case FIR No.183 dated 01.11.2021 registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Shahpurkandi, District Pathankot.

Brief facts of the case are that on 01.11.2021 when SI Harjinder Singh along with other police officials was present near Moni Baba Bandi for doing patrolling duty, they received a secret information that the petitioner, who is habitual of selling the poppy husk, keeping in his possession bags of poppy husk, present at the katcha passage of Manwal and waiting for customer for selling the same. On the said information, the police apprehended the petitioner along with 02 weighty plastic bags. When the said bags were opened,

poppy husk were recovered from these bags. After weighing on electric scale the weight of poppy husk along with plastic bags came to 25 kgs 700 grams.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. The petitioner has nothing to do with the alleged recovery. Provisions of Section 50 of the NDPS act were not complied with by the police at the time of alleged recovery. No independent witness was joined by the police. The weight of alleged poppy husk, recovered from the petitioner, was done along with the plastic bags. The weight of plastic bags should not be included in the weight of poppy husk. In support of his arguments learned counsel for the petitioner has placed reliance upon the orders of this Court passed in ***Sandeep Singh Vs. State of Punjab : 2017(2) Law Herald 1420 and Kulbir Singh and another Vs. State of Punjab : 2019(1) Law Herald 42.***

Learned counsel for the petitioner further submits that even otherwise the quantity of contraband recovered from the petitioner is marginally higher than the commercial quantity. The petitioner was in custody since 01.11.2021. He is not involved in any other case. The trial is likely to take long time. No useful purpose will be served by further detention of the petitioner in custody. Therefore, the petitioner may be released on regular bail.

On the other hand learned State counsel opposed the present petition in terms of status report dated 22.11.2022 filed by way of an affidavit of Sh. Lakhwinder Singh, PPS, Deputy Superintendent of Police (City), Pathankot in the Court today which is taken on record.

Learned State counsel submits that the petitioner was found in a conscious possession of 25 kgs 700 grams of poppy husk without any permit or licence. The alleged quantity recovered from the petitioner is falls in the category of commercial quantity. Therefore, the petitioner does not deserve the concession of regular bail.

Custody certificate dated 21.11.2022 has been filed by learned State counsel which is taken on record. As per the said custody certificate, the petitioner is in custody from the last 1 year and 19 months and he is not involved in any other case.

I have heard learned counsel for the parties and gone through the paper-book.

Keeping in view the facts and circumstances of the case, nature of accusation against the petitioner, the period of his custody, the fact that the petitioner is not involved in any other case under the NDPS Act and also the fact that the trial is likely to take long time but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Accordingly, the present petition is allowed and the petitioner-Phool Sahai Kahira @ Fulsay Kahara is ordered to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

22.11.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No