

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

204

CRM-M-21680-2022

Decided on: 19th September, 2022

Lalli

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr.P.S. Sekhon, Advocate for the petitioner.
Mr. A.P.S. Tung, Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J (Oral):

This third petition under Section 439 of the Code of Criminal Procedure is filed seeking regular bail in FIR No.75 dated 30.7.2021 under Sections 15 and 29 of Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short 'the Act') registered at Police Station Moonak, District Sangrur.

As per the case set up, the police received a secret information that the petitioner along with Harinder Singh were engaged in selling poppy husk. Harinder Singh was employed as a driver of truck bearing registration No. PB-13BC-5852. Acting upon the information, naka was laid and the truck was checked. The petitioner was the occupant of the truck from which 52 kg. of poppy husk was recovered. The truck is owned by the petitioner.

The earlier two petitions were dismissed as withdrawn.

Learned counsel for the petitioner submits that the petitioner is in custody since 30.7.2021, investigation is complete. Recovery was of 52 kg. of poppy husk which was weighed along with the plastic bag and that too

with a Spring Weigh Scale, the accuracy of weighment was compromised. He further submits that challan is presented, no prosecution witness has been examined and charges have been framed. He relies upon the decision of the Supreme Court in *Nitish Adhikary @ Bapan vs. The State of West Bengal* passed in petition(s) for *Special Leave to Appeal No. 5769 of 2022* where considering the custody period, the accused was granted bail.

Learned State counsel opposes the prayer and submits that petitioner is involved in another FIR under the Act.

Learned counsel for the petitioner submits that in the other FIR the petitioner was granted anticipatory bail and no recovery was made from him.

Without commenting on the merits of the case, an issue has raised with regard to weight of the recovered contraband; considering the nature of the contraband recovered; the petitioner is in custody for more than one year; even if the case of the prosecution is taken at the highest; the recovery is marginal higher than the commercial quantity prescribed in the Schedule of the Act, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

The petition is allowed.

It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

19th September, 2022
anuradha

1. Whether speaking/ reasoned	:	Yes /No
2. Whether reportable	:	Yes /No