

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25785-2022 (O&M)

Date of Decision: 05.12.2022

Ram Parvesh @ Rajat Dhobi

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Majithia, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, Deputy Advocate General, Haryana

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 0150 dated 30.03.2022, under Section 18 (C) of NDPS Act, registered at Police Station Industrial Sector 29, Panipat.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 30.03.2022, which is about 8 ½ months and the investigation of the case has already completed and thereafter the challan has been presented before the competent Court. He submitted that it is case where the allegations against the petitioner were that the police received an information that the petitioner was cultivating the crop of opium in the garden next to the NFL premises and allegedly there was a recovery of 4 kgs and 140 gms of opium plant. He submitted that even when the FSL report was obtained, as per the report the opinion was that the sample has

been identified as 'opium plant' and it was not opium and in the FSL report also it is stated that the physical appearance of the sample was 'plant twigs with poppy capsules' and therefore, at the most it was a case of poppy husk and not opium even as per the FSL report and therefore, the aforesaid quantity does not fall in the category of commercial quantity. He submitted that the petitioner is not involved in any other case and is not a habitual offender and he has faced incarceration for about 8 ½ months.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted that it is correct that the petitioner is in custody from 30.03.2022 and now the challan has been presented. He has also handed over a photocopy of FSL report during the course of arguments today. A perusal of the same would show that the physical appearance has been shown to be plant twigs with poppy capsules but as per FSL report it has been mentioned as opium plant. He further submitted that once the opinion of the FSL report is opium plant, it will fall in the category of opium and therefore it is commercial quantity. He further submitted that however it is correct that the petitioner is not a habitual offender and is not involved in any other case.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for about 8 ½ months and challan has been presented. As per learned counsel for the parties, the petitioner is not a habitual offender and is not involved in any other case. According to the learned counsel for the petitioner, the alleged confiscated quantity can at the most fall within the category of poppy husk, but as per the learned State counsel it falls within the category of opium. However, a perusal of the FSL report as submitted by the learned State counsel would show that the opinion with regard to the confiscated quantity was "opium

plant” and the physical appearance of the sample has been stated as “plant twigs with poppy capsules”. Therefore, the nature of the confiscated quantity is yet to be ascertained at the time of trial when the evidence will be led. Therefore, even if assumingly that the confiscated quantity is an opium still the petitioner can be considered for the grant of regular bail but the same can be done only in the light of Section 37 of the NDPS Act. Therefore, considering the nature of sample collected and opinion of the FSL report, which shows only 'opium plant', the bar contained under Section 37 of the NDPS Act will not apply at this stage since it has to be seen at the time of trial as to what is the nature of the confiscated quantity and whether it falls in the category of opium or poppy husk since the expression used by the FSL Laboratory is opium plant. The petitioner is stated to be not involved in any other case and is not a habitual offender.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

05.12.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No
: Yes/No