

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47297-2021 (O&M)

Date of Decision: 13.01.2022

Sukhwinder Singh @ Kaka

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sidhu, Advocate for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

Through Video Conferencing

JASGURPREET SINGH PURI, J. (Oral)

CRM-40292-2021

The present application has been filed for placing on record recovery memo (Annexure P-3).

For the reasons mentioned in the application, the same is allowed and the recovery memo (Annexure P-3) is taken on record.

Main case

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. 95 dated 25.06.2021, under Section 15 of NDPS Act, 1985, registered at Police Station City Moga, District Moga.

The learned counsel for the petitioner has submitted that in the present FIR the petitioner has been falsely implicated only because of the enmity in the village. He submitted that even otherwise also the alleged recovery from the petitioner has been shown to be 52Kg. of poppy husk alongwith the bags and the weight of bags is more than 2 Kg. and, therefore, the quantity does not fall in the commercial quantity as the commercial quantity of the poppy husk is 50 Kgs. under the schedule of NDPS Act. He further submitted that the petitioner is not involved in any other case and has clean antecedents but he is in custody from 25.06.2021.

On 15.12.2021 this Court had put at query to the State counsel as to whether the weight of the bag was also included in the total weight or not and as per the challan how the petitioner was connected with the present case and whether they have been able to get the source of the poppy husk and the place where allegedly the petitioner was to sell or not, and the State counsel had sought time to file an affidavit in the present case.

Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has submitted that reply/affidavit has not been filed in the present case but custody certificate has been filed.

On being specifically asked again to the learned State counsel with regard to the fact as to whether the total poppy husk was weighed alongwith the bags or not, he has also relied upon the recovery memo which the petitioner has placed on record vide Annexure P-3 and vide the aforesaid recovery memo, the weight was measured alongwith the bags as 26/26 Kg. On another query being asked from the learned State counsel as to how the petitioner was connected with the present case and as to whether they have

been able to get the source of poppy husk or not, the learned State counsel has stated that he has not been able to obtain instructions in this regard and especially in view of the fact that no affidavit has been filed by the State in this case.

I have heard the learned counsel for the parties.

The alleged recovery from the petitioner was 52 Kgs. alongwith the bags weighed together. As per the custody certificate and the learned State counsel the petitioner is not involved in any other case and has clean antecedents. The submission made by learned counsel for the petitioner that the present FIR was lodged due to personal enmity and that he has clean antecedents and, therefore, he may be granted regular bail especially in view of the fact that he is in custody from 25.06.2021 would certainly carry some weight. So far as the applicability of Section 37 of the NDPS Act is concerned, the commercial quantity is fixed at 50 Kg. and in the present case, the total alleged recovery was of 52 Kgs alongwith the bags which were weighed together and, therefore, the bar contained under Section 37 of the NDPS Act would not apply in the present case. Furthermore it is not the case of the State that in case the petitioner is released on bail then he may influence any witness or may tamper with evidence or may flee from justice.

Therefore, without commenting on the merit of the case and considering the totality of circumstances, 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.

13.01.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No