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

**CRM-M-36171-2022
Date of Decision: 24.08.2022**

Billu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Satnam Singh Gill, Advocate,
for the petitioner.

Mr. Naveen S. Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

This is the fourth petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.122, dated 04.03.2020 under Sections 15/27 of the N.D.P.S. Act, registered at Police Station Gharaunda, District Karnal.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 04.03.2020 and the trial has not commenced as yet. He further submitted that earlier he had filed three bail petitions before this Court, the first bail petition was dismissed as withdrawn on 22.12.2020 and the second petition was also dismissed as withdrawn on 24.08.2021, and thereafter, the third bail petition being CRM-M-4542-2022, the same was dismissed vide Annexure P-3. He also submitted that considering the long custody of the petitioner, he may be

considered for the grant of regular bail. He further submitted that there has been a violation of Section 42 of the NDPS Act, since the recovery was made at the night time and provision of Section 42 of the NDPS Act was not complied with.

On the other hand, Mr. Naveen S. Panwar, learned Deputy Advocate General, Haryana has submitted that the present fourth successive bail application is not maintainable and even otherwise also on merits, the petition deserves to be rejected. He further submitted that there has been a recovery from the truck which the petitioner was driving, which was coming from Indore to Punjab and it was intercepted case of the area of Asandh, District Karnal and there was a recovery of 204 kgs. of *Poppy Husk*, which is a huge quantity and more than four times than the commercial quantity prescribed under the NDPS Act. He also submitted that all the provisions of Section 50 of the NDPS Act were complied with in the present case. He further submitted that so far as the objection raised by the learned counsel for the petitioner that Section 42 of the NDPS Act was not complied with, the same is also not sustainable in view of the fact that the truck from where the *Poppy Husk* was recovered, was in transit, and therefore, the provisions of Section 42 of the NDPS Act will not apply. Learned State counsel has also relied upon the judgment of the Co-ordinate Bench of this Court passed in CRM-M-27760-2021 titled as “*Mandeep Kaur Vs. State of Punjab*” decided on 25.07.2022, wherein it was held that when the vehicle for the conveyance is in transit then the provision of Section 42 of the NDPS Act will not apply. He further submitted that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

This is the fourth successive bail petition. The third bail petition was dismissed on merits. The reliance made by the learned State counsel in **Mandeep Kaur's case (supra)** is well placed. The petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act. The alleged confiscated quantity was a huge quantity which is four times more than the commercial quantity prescribed under the NDPS Act. The long custody of the petitioner cannot become a ground itself for making a departure from the bar contained under Section 37 of the NDPS Act.

In view of the aforesaid position, no ground is made out to grant regular bail to the petitioner. Consequently, the present petition is hereby dismissed.

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

24.08.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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