

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

CRM-M-36977-2022

Date of decision : 11.10.2022

Harpreet Singh Brar @ Happy

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vikram Chaudhri, Advocate assisted by
Mr. Keshavam Chaudhri, Advocate,
Mr. Kunal Sharma, Advocate and
Mr. Digvijay Singh, Advocate
for the petitioner.

Mr. Sarabjit S. Cheema, Asstt. Advocate General, Punjab
for the respondent-State.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No.53 dated 22nd of March, 2022 registered for the offences punishable under Sections 8B, 15C and 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'), at Police Station Kotbhai, Muktsar, Punjab

2. As per the allegations levelled in the FIR, it was alleged that :-

“Upon receipt of information myself SI/SHO along with fellow employees reached ASI Baldev Singh No. 05/SMS in the

house of Harpreet Singh alias S/o Darshan Singh S/o Harnak Singh R/o Village Mallan at the place of spot where ASI Baldev Singh apprised me about the facts, myself SI/SHO tried to join independent witness but everyone expressed his compulsion went from there, as a result of which independent witness could not be joined. Then myself SI/SHO asked the name and address from the person who was nabbed by ASI Baldev Singh, who revealed his name as Harpreet Singh alias Happy S/o Darshan Singh S/o Harnam Singh R/o Mallan, to whom myself SI/SHO while providing information about me told that My name is SI Navpreet Singh, am posted as Station House Officer Police Station Kotbhai, I have worn my uniform upon which my name plate is affixed to whom myself SI/SHO said that you have cultivated green plants of Opium whereupon poppy is also present, you have sown it on the left side of your house and on the rear side of your house, in this regard action is to be initiated against you under the Act made for Intoxication substances, as or the Intoxicated substance Act, you are having right that you can get the proceedings initiated through some learned Magistrate or Gazetted officer, if you want that the proceedings may be initiated in front of learned Magistrate or Gazetted officer of in front of them then you can be taken to learned Magistrate or to the Gazetted Officer or then can be called here. Whereby Harpreet Singh alias Happy said that I do not want to initiate proceedings to be initiated in the presence of learned Magistrate, I want to get the proceedings initiated in the present of Gazetted officer of Police, then you may call some Police Gazetted officer at the spot and get the proceedings initiated, whereby Notice under Section 50 NDPS Act was prepared separately, upon the notice suspect Harpreet Singh alias Happy above named appended his signatures in English, ASI Nirmal Singh and ASI Baldev Singh appended their testimony, in the meanwhile Sh. Narinder Singh PPS Deputy Superintendent of Police Gidderbaha came present, who verified the notice under section

50 NDPS Act, Upon the instructions of worthy DSP myself SI/SHO with the help of fellow employees chopped off (Harvested) cultivation of opium plants whereby Poppy was also present weighed it through balance then Total weight of recovered Opium cultivated green plants along with poppy was found as 650 Kilogram. Recovered cultivation of green plants of opium along with poppy in each bundle was put total 65 Plastic sacks were prepared, upon the sacks serial wise number 1 to 65 were affixed they myself SI/SHO tighten the inlets of all the plastic sacks with packthread affixed my seal NS parcels of the same were prepared Form M-29 was filled specimen of seal was prepared separately, seal after used was handed over to ASI Nirmal Singh NO.1105/BTI. Myself SI/SHO took above mentioned recovered 65 parcels plastic sacks contains green plants of opium cultivation duly sealed with seal NS along with specimen of seal, Form M-29 in Police custody vide memo, Upon the memo ASI Nirmal Singh No.1105/BTI and ASI Baldev Singh No. 05/SMS appended testimony and Sh. Narinder Singh PPS Deputy Superintendent of Police Gidderbaha attested it. Suspect Harpreet Singh alias Happy above named by sowing green plants of opium cultivation has committed an offence under Section 8(B), 15(C)/18/61/-85 NDPS ACT. Therefore, so slip is reduced to writing and is being sent for registration of case by hand through PHG Sandeep Kumar 12028 to Police Station.”

3. Ld. Senior Counsel appearing for the petitioner submits that the prosecution is at sea as the FIR has been registered for the offences punishable u/s 18 as well as 15 of the Act. It has been further stated that the plants as per the FIR are said to be poppy plants, which is a term which is foreign to the Bare Act. It is claimed that Clause 2 (xvii) of the Act, defines 'opium poppy' as a plant of the 'species

Papaver somniferum L'. The forensic lab was required to specify the species of the plant but has failed to do so and, thus, in such circumstances, the petitioner cannot be accused of offence punishable under the NDPS Act. It has been further contended that in any case the quantity cannot be termed as commercial quantity and, thus, Section 37 will not be attracted to dislodge the prayer made by the petitioner for regular bail.

4. Ld. State Counsel while referring to the FSL Report submits that from the contraband Morphine & other Alkaloids of Opium have been found to be present and, thus, it cannot be said that the plant recovered will not fall within the definition of opium poppy as enumerated under Clause 2(xvii) of the Act. However, he does not dispute the fact that quantity of the contraband will be an intermediate quantity in view of Note 3 appended to the Notification specifying small quantity and commercial quantity, bearing S.O. No.1055(E), dated 19th October, 2001, which reads as under :

3) "Small Quantity" and "Commercial Quantity" with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

5. I have heard Ld. Counsel for the parties and have gone through the records of the case.

6. Petitioner has already undergone incarceration of more than 6 months and 22 days. Investigation is complete and Challan stands presented. Apart from the merits of the case, the petitioner is stated to be a physically crippled person, who is permanently disabled to the extent of 60 per cent.

7. In the circumstances, without commenting on the merits of the case, the present petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

8. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

October 11, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No