

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

204

CRM-M-41056-2022

Date of decision: 29.09.2022

DEENA SINGH @ TITTU

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Paramjit Singh Bal, Advocate
for the petitioner.

Ms. Monika Jalota, Sr.DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The instant petition has been filed under Section 439 Cr.P.C., seeking the indulgence of regular bail, to the petitioner.
2. In FIR bearing No. 39 of 26.3.2021, registered at Police Station Tapa Mandi, District Barnala, offences constituted under Sections 15, 25, 29, 61, 85 of the NDPS Act, 1985, are embodied.
3. The total quantum/weight of puppy husk, as became recovered, at the crime site, from the alleged conscious, and, exclusive possession of the present petitioner, and, from the alleged conscious, and, exclusive possession of other co-accused namely, Gurdeep Singh, and, Amritpal Singh, is about 55 kgs. Though, the weight of the above seizure, as made at the crime site, does make it fall within the ambit of commercial quantity thereof, resultantly the rigours of Section 37 of the NDPS Act, are applicable thereons, with a further consequence, that prima facie, the present petitioner becomes not entitled to his becoming admitted to regular

bail.

4. Be that as it may, the translated copy of the recovery memo, as placed on record, though speaks that at the crime site, co-accused Amritpal Singh carrying in his hand, a plastic bag containing poppy husk, and, after the poppy husk, as carried therein, becoming retrieved therefrom, and, also upon its becoming weighed, it revealing to be carrying a weight of about 25 kgs. However, another set of black coloured plastic bag(s), has not been narrated in the recovery memo, to be held in the hands of the accused concerned, or to in any other mode/manner, rather held in the conscious, and, exclusive possession, of any of the co-accused. The second plastic bag, however, becomes narrated in the recovery memo to be yet existing at the crime site, and, therefrom poppy husk weighing about 30 kgs became retrieved.

5. The learned State counsel argues that, since all the co-accused were available at the crime site, and, when the total weight of the haul, is about 55 kgs, thereupon, the present bail petitioner cannot become entitled to his becoming admitted to regular bail.

6. Though, the above submission is rested, upon the contentions in tandem therewith, existing in the reply on affidavit, as furnished to the instant petition, by the respondent, but this Court would not proceed to accept the above made contention, as made in the reply, unless it was in consonance with the narrations, as carried in the recovery memo, as the latter is the prime document, and/or, is the primary evidence.

7. In the above regard, this Court after reading the recovery memo, as placed on record, discerns that there is a completest disharmony inter se the relevant fact, as, appertaining to the second set of black coloured plastic bags, wherefrom poppy husk weighing about 30 kgs,

became retrieved, and, rather with the above contention, as made in the reply of the respondent. In sequel, the above disharmony, has the resultant effect, that the prosecution, prima facie, at this stage, has not been able to bring-forth any explanation, with respect to the second set of black coloured plastic bags, carrying therein poppy husk weighing about 30 kgs, rather being either exclusively, and, consciously kept by any of the accused, and/or, being kept in the vicinity of the crime site, and, also with their open knowledge qua it being their property, and/or, was in their alleged conscious, and, exclusive possession.

8. The effect of non-explanation in respect thereof, being furnished by the investigating officer concerned, besides when importantly at the crime site, there were two vehicles, namely a truck bearing No. PB-11BN-9063, owned by the present bail applicant Dinna Singh, and, also a car bearing No. PB-10-BZ-8141, owned by co-accused Amritpal Singh, and, when co-accused Gurdeep Singh, is the brother of Dinna Singh, therefore, it appears that when the crime site, as submitted by the learned State counsel, rather is a busy national highway, thereupon the relevant appearance there, may be a sequel of its being thrown on to the national highway, by persons other than the co-accused, and, it becoming planted, upon the present accused, and, other co-accused concerned.

9. In the wake of the above, this Court is of the prima facie opinion, that in respect of the second set of black coloured bags, wherefrom 30 kgs of poppy husk, became retrieved, neither the recovery memo, nor the FIR has been able to prove, qua theirs, appertaining to the alleged conscious, and, exclusive possession of the present petitioner.

Therefore, and, also when at this stage, no evidence has been adduced by the prosecution, suggestive of the fact, that in the event of the bail

petitioner being enlarged on regular bail, there is every likelihood of his fleeing from justice, and/or, tampering with prosecution evidence.

10. Consequently, the instant petition is allowed, and, the petitioner bail applicant is ordered to be released from judicial custody, if not required, in any other case. However, the granting of bail to the bail applicant-petitioner, is subject to his furnishing personal and surety bonds in the sum of Rs. 50,000/- each, before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, and, also subject to his not tampering with prosecution evidence, and, his not influencing prosecution witnesses, and, besides also his appearing before the trial Court concerned, as and when directed to make his personal appearance unless validly exempted.

11. The afore observations are meant only for the disposal of the present petition, and, shall not affect the merits of the trial arising from the FIR (supra).

29.09.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*