

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

CRM-M-53546-2022

Date of Decision:-09.12.2022

Tirlok Singh.

.....**Petitioner.**

Versus

State of Haryana.

.....**Respondents.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Karandeep S. Sidhu, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.639 dated 27.07.2022 under Sections 15(C) 27, 61, 85 of NDPS Act registered at Police Station Azad Nagar, Hisar, District Hisar.

The brief facts of the case are that while the police party was on patrolling duty a secret informer informed that Sukhwinder @ Sukha, Raju Singh, Rajender Singh @ Raju and Karamjeet deal in Poppy Husk. They had brought a huge quantity of Poppy Husk in bags from Rajasthan and were sitting along with the bags of Poppy Husk near general Chopal at village Muklan and were waiting for some transport for going to Punjab. If a raid was conducted they could be apprehended.

Based on this information, the four persons were apprehended with the bags. The first person disclosed his name as Sukhwinder @ Sukha,

the second as Raju Singh, the third as Rajender Singh @ Raju and the fourth as Karamjeet Singh. From the seven bags 52 Kgs 500 Grams of Poppy Husk were recovered.

Thereafter during interrogation one of the accused namely Sukhwinder @ Sukha named the petitioner in the present case. Based on the said statement of the co-accused, the petitioner was nominated as an accused and arrested on 02.08.2022 after which an offence under Section 27 of the NDPS Act was added in the present FIR.

The Counsel for the petitioner contends that the disclosure statement of a accused against co-accused is inadmissible in evidence as is apparent from the judgments in **Tofan Singh Vs. State of Tamil Nadu, 2020 AIR (Supreme Court) 5592**, **Rakesh Kumar Singla Vs. Union of India 2021(1) RCR (Criminal) 704**, **State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta &Anr. 2022(1) RCR (Criminal) 762**, **Surinder Kumar Khanna Vs. Intelligence Officer, Director of Revenue Intelligence, 2018(3) RCR (Criminal) 954** and **Sanjeev Chandra Aggarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590**. Further the judgment of the Hon'ble Supreme Court in **State of Haryana Vs. Samarth Kumar 2022(3) RCR (Criminal) 991** would come to the aid of the petitioner since this is a regular bail application. No recovery whatsoever has been effected from the petitioner and even the recovery effected from the arrested accused of 52 Kgs 500 Grams of Poppy Husk is marginally above the commercial quantity. In the other case registered against the petitioner, the petitioner has been convicted and sentenced to undergo imprisonment for one month vide judgment dated 17.09.2021 (Annexure P-4). Thus the petitioner is entitled to the grant of bail.

The Counsel for the State on the other hand does not dispute the factual position as narrated hereinabove. He however, submits that since the petitioner is a convict in a case under the NDPS Act, the petitioner ought not to be granted the concession of bail in view of Section 37 of the NDPS Act.

I have heard learned Counsel for the parties at length.

Admittedly, the petitioner is not named in the FIR but his name finds mention in the disclosure statement of his co-accused. The evidentiary value of the said statement shall be adjudicated upon during the course of trial. Be that as it may, the recovery from the arrested accused is also of contraband marginally above the commercial quantity. As no recovery whatsoever has been effected from the petitioner, and he has been named on a disclosure statement the provisions of Section 37 of the NDPS Act can be relaxed to an extent more so when in the earlier case also the petitioner has been convicted for a period of one month for having in his possession 05Kgs of Poppy Husk.

Thus, without commenting on the merits of the case, the present petition is allowed and petitioner-**Tirlokh Singh** son of Sh. Makhan Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the cases mentioned in this order.

In addition, the petitioner (or any one on their behalf) shall prepare a FDR in the sum of Rs.2,00,000/- and deposit the same with the

Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

The petition stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

December 09, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>