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

CRM-M-14903-2023 (O&M)

Date of decision : 18.05.2023

Parminder Singh @ Dhami**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. N.K. Verma, Advocate for
Mr. Ankush Verma, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

*********RAJESH BHARDWAJ, J. (Oral)**

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.120 dated 09.11.2022, under Section 15 & 29 of NDPS Act, registered at Police Station Hariana, District Hoshiarpur.

As per the facts of the case, police party while on patrolling saw a private car coming from the side of Dasdka. ASI Bikramjit Singh gave a signal to stop the vehicle and on having stopped the vehicle, he asked the name of the driver who disclosed his name to be Parminder Singh @ Dhami. He saw some bags lying in the car and thus, he suspected the same to be some contraband. ASI gave notice under Section 50 of NDPS Act to Parminder Singh @ Dhami whether he wants to get the search conducted in presence of the Magistrate or Gazetted Officer. However, Parminder Singh @ Dhami gave his consent that search be conducted by the ASI only. Then, the search of the car was conducted and three plastic bags were recovered from the car. On opening, the same

were found to be poppy husk. The total weight of poppy husk was found to be 51.700 kg. Petitioner failed to show any license for the possession of the same and thus, the FIR was registered against him. Petitioner was arrested on spot. Samples were taken and sent to the FSL. Petitioner approached the Court of learned Judge, Special Court, Hoshiarpur praying for grant of regular bail. However, after hearing both the sides, learned Judge declined the same vide his order dated 20.01.2023. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has contended that the petitioner has been falsely and frivolously implicated in this case. He submits that neither the petitioner is the owner of the car nor he was present on spot. He submits that the present case has been falsely planted on the petitioner. He submits that even otherwise from the reading of the allegations made in the FIR, it is apparent that the offer under Section 50 of NDPS Act had been given by the ASI Bikramjit Singh for the search of the petitioner and that of the car, however, the search was conducted not in the presence of any Gazetted Officer or the Magistrate but he himself conducted the search. It is submitted before this Court that it was mandatory for the police officer to conduct the search in the presence of the Gazetted Officer under Section 50 of the NDPS Act. He has submitted that there was no independent witness joined during the search of the car. He submits that the alleged recovery made from the car of the petitioner is 51.700 kg of poppy husk which is marginally above the small quantity which is less than 50 kg of poppy husk. He submits that the weight of the contraband is including the weight of the bags. Hence, he submits that the

total weight of the contraband recovered cannot exceed 50 kg and at the most, recovery from the petitioner is small quantity for which the maximum punishment is 06 months and the petitioner is behind bars from last more than 06 months. He submits that the petitioner has no criminal antecedents. He further submits that the investigation is already complete in this case and thus, in the overall facts and circumstances, petitioner deserves to be granted regular bail.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He has submitted that even if the petitioner is not the owner of the car, the same is of no consequence as he was arrested on spot and recovery of the contraband was effected from the car in which he was travelling. Thus, notice under Section 50 of NDPS Act was given to the petitioner who reposed the faith in the police. He gave his consent and recovery was effected from his car. He has submitted that the total weight of the contraband exceeds to 50 kg of poppy husk and thus, the same amounts to be the recovery of commercial quantity. He submits that as per instructions provided by ASI Avtar Singh, petitioner is not involved in any other case. He also submits that the investigation is already complete and report under Section 173 Cr.P.C. has been presented and the case is fixed for framing of the charge.

I have heard counsel for the parties and perused the record.

Evidently, petitioner is behind bars since 09.11.2022. The total recovery effected from his car in which he was travelling is 51.700 kg of poppy husk. Whether weight of the contraband amounts to small quantity or non-commercial is a debatable issue. However, as submitted before this Court, petitioner is not involved in any other case. The investigation

already stands completed.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

18.05.2023

m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No