

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

CRM-M-13071-2022

Date of decision : 01.05.2023

Boota Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Lavanya Gupta, Advocate for the petitioner.

Ms. Jasleen Kaur Sidhu, DAG, Punjab.

MANOJ BAJAJ, J.

Petitioner has filed this second petition under Section 439 Cr.P.C for grant of regular bail pending trial in case FIR No.35 dated 22.03.2021 registered under Section 15 Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Lohian, District Jalandhar, who is in custody since his arrest on 22.03.2021.

The allegations in the FIR as noticed by the learned Judge, Special Court, Jalandhar in the order dated 01.10.2021 are as under:-

“.....that on 22.03.2021, on receipt of telephonic message at Police Station Lohian, SI Sawinder Singh along with other police officials reached at T-point, Bus Stand Kamalpur where ASI Avtar Singh along with other police officials was already present there in connection with 'Nakabandi' and had apprehended one clean shaven youth on the basis of suspicion. The said youth was carrying two plastic bags on a motorcycle make Pulsar bearing registration no.PB-08-EQ-6394, at that time. On search of said plastic bags, 51 kgs of poppy husk was recovered. Accordingly, present case was registered against the accused.”

Learned counsel for the petitioner has argued that as per the prosecution, the petitioner was arrested for possessing 51 kgs poppy husk, but despite framing of charges on 11.02.2022, no prosecution witness has been examined so far. Learned counsel submits that in all there are 13 prosecution witnesses and trial is likely to consume considerable time to conclude, therefore, he be released on regular bail.

On the other hand, learned State counsel assisted by ASI Hans Raj has opposed the prayer and argued that the recovered contraband falls in commercial quantity and apart from this, the petitioner is also involved in two more cases bearing FIR No.156 dated 23.07.2019 registered under Sections 15, 61 and 85 NDPS Act and FIR No.56 dated 17.05.2011 registered under Section 61 Excise Act and in this regard, she has referred to the custody certificate filed by way of affidavit of Hemant Sharma, Additional Superintendent of Central Jail Kapurthala. However, it is not disputed by learned State counsel that petitioner is on bail in FIR No.56 dated 17.05.2011 registered under Excise Act. It is also not disputed that no prosecution witness has been examined so far after framing of charges on 11.02.2022.

At this stage, learned counsel for the petitioner has drawn the attention of the Court to the order dated 16.09.2020 (Annexure P-4) passed by this Court releasing him on bail in case FIR No.156 dated 23.07.2019. He further submits that in the present case, the alleged recovery is of 51 kg poppy husk, which also includes the weight of two bags, wherein it was contained, therefore, if, only contraband is to be seen, its quantity would be non-commercial.

After hearing learned counsel for the parties, considering the above background as well as the custody of the petitioner, this Court is of the opinion that the conclusion of trial is likely to consume considerable time, as the trial is yet to commence, therefore, further detention of the petitioner may not serve any useful purpose, who is presently confined in judicial custody after his arrest on 22.03.2021. Apart from it, the prosecution witnesses are police official and at present there does not seem to be any possibility of their being won over.

Resultantly, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

The petition is allowed.

(MANOJ BAJAJ)
JUDGE

01.05.2023

vanita

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No