

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-12661-2023

Date of Decision: 31.5.2023

Pala Singh

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Mikhail Kad, Advocate
for the petitioner.

Mr. Hakam Singh, AAG, Punjab.

KARAMJIT SINGH, J.

Prayer in the present petition under Section 439 of Code of Criminal Procedure is for grant of regular bail to the petitioner in case FIR No.58 dated 30.5.2021 registered for the offences punishable under Sections 15, 25, 29 of NDPS Act at Police Station Sadar Raikot, District Ludhiana Rural.

2. The allegations in nutshell are that on 30.5.2021, 22 kg of poppy husk was recovered from the car in which the petitioner and co-accused Manjit Singh Fauji were travelling and after their arrest, another 48 kg of poppy husk was recovered from open space near the house of the present petitioner.

3. Counsel for the petitioner *inter alia* contends that the petitioner is falsely implicated in the present case. He further submits that the prosecution has failed to establish that the open space from where 48 kg of poppy husk was recovered, belongs to the petitioner. It is further submitted

that the said recovery could not be said to be effected from conscious possession of the petitioner as the same was effected from open space. Counsel for the petitioner further submits that the petitioner is in custody for the last about 2 years and is having no criminal history and that the trial is not progressing ahead and co-accused Manjit Singh Fauji is granted concession of regular bail by this Court vide order dated 24.1.2023 (Annexure P-2). So, prayer is made that the petitioner be released on regular bail. In support of his arguments, counsel for the petitioner has referred to order dated 1.8.2022 passed by Hon'ble Supreme Court in **Nitish Adhikary @ Bapan v. State of West Bengal**; SLP (Criminal) 5769 of 2022 wherein the petitioner was granted bail on the ground that he has undergone custody for a period of 1 year and 7 months in a case registered under Section 21 © of NDPS Act.

4. Present petition is opposed by the State counsel who submits that 22 kg of poppy husk was recovered at the time of registration of FIR from possession of the petitioner and Manjit Singh Fauji who at that time were traveling in a car and thereafter, another 48 kg of poppy husk was recovered from open space adjoining to the house of the petitioner. State counsel further submits that aforesaid 60 kg of poppy husk comes under commercial quantity and thus, embargo provided under Section 37 of NDPS Act is attracted to the present case. However, the State counsel has not disputed the fact that the petitioner is in custody for the last more than 1 year and 11 months and is having no criminal history and further, till date, only 4 prosecution witnesses are examined out of total 14 witnesses on behalf of the State.

parties.

6. As per prosecution, recovery of 22 kg of poppy husk was effected from a car in which the petitioner and Manjit Singh Fauji were traveling. It is also the case of the prosecution that another 48 kg of poppy husk was recovered from an open space adjoining to the house of the present petitioner. It is a matter of evidence as to whether said open space was accessible to all the persons. It is apparent that the said recovery of 48 kg of poppy husk was effected from residential area of the village but it appears that no independent witness was associated by the investigating officer from the said locality before effecting recovery of 48 kg of poppy husk. Admittedly, it will take considerable time for trial to conclude as 10 more witnesses remain to be examined on behalf of the prosecution. The petitioner is in custody for the last about 2 years and is having no criminal history and co-accused Manjit Singh Fauji is already enlarged on bail vide order (Annexure P-2).

7. In view of above, it is a debatable issue as to whether recovery of 48 kg of poppy husk made from open space is to be considered as recovery from conscious possession of the petitioner and that too in the absence of any independent corroboration. Long custody of about 2 years also goes in favour of the petitioner as mitigating circumstance to overcome the rigors of Section 37 of NDPS Act. In the given circumstances, this Court is of the view that the petitioner is entitled to grant of regular bail during the pendency of the trial.

8. For the foregoing reasons, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular bail subject to his furnishing bail bonds/surety bonds to

the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

May 31, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No