

210

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

**CRM-M-24258-2022 (O&M)
Date of Decision: 03.08.2023**

HARINDER SINGH

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Yashpal Thakur, Advocate for the petitioner.

Mr. Ramdeep Partap Singh, Sr. DAG, Punjab.

...

AVNEESH JHINGAN, J. (Oral)

1. This petition is filed praying for grant of regular bail in FIR No. 75 dated 30.07.2021 registered under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Moonak, District Sangrur, Punjab.
2. Learned counsel for the petitioner claims parity with co-accused Lalli, who was granted bail by this court on 19.09.2022 in CRM-M-21680-2022 by passing following order:

“This third petition under Section 439 of the Code of Criminal Procedure is filed seeking regular bail in FIR No.75 dated 30.7.2021 under Sections 15 and 29 of Narcotic Drugs and Psychotropic Substances, Act, 1985 (for short 'the Act') registered at Police Station Moonak, District Sangrur.

As per the case set up, the police received a secret information that the petitioner along with Harinder Singh were engaged in selling poppy husk. Harinder Singh was employed as a driver of truck bearing registration No. PB-13BC-5852. Acting upon the information, naka was laid and the truck was checked. The petitioner was the occupant of the truck from which 52 kg. of poppy husk was recovered. The truck is owned by the petitioner.

The earlier two petitions were dismissed as withdrawn.

*Learned counsel for the petitioner submits that the petitioner is in custody since 30.7.2021, investigation is complete. Recovery was of 52 kg. of poppy husk which was weighed along with the plastic bag and that too with a Spring Weigh Scale, the accuracy of weighment was compromised. He further submits that challan is presented, no prosecution witness has been examined and charges have been framed. He relies upon the decision of the Supreme Court in **Nitish Adhikary @ Bapan vs. The State of West Bengal** passed in petition(s) for **Special Leave to Appeal No. 5769 of 2022** where considering the custody period, the accused was granted bail.*

Learned State counsel opposes the prayer and submits that petitioner is involved in another FIR under the Act.

Learned counsel for the petitioner submits that in the other FIR the petitioner was granted anticipatory bail and no recovery was made from him.

Without commenting on the merits of the case, an issue has raised with regard to weight of the recovered contraband; considering the nature of the contraband recovered; the petitioner is in custody for more than one year; even if the case of the prosecution is taken at the highest; the recovery is marginal higher than the commercial quantity prescribed in the Schedule of the Act, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

The petition is allowed.

It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.”

3. Learned counsel for the petitioner further submits that the petitioner was a driver and co-accused was the owner of the truck as well as the occupant.

4. Learned State Counsel on instructions opposes the prayer for grant of bail but is not in a position to distinguish the case of the petitioner with the co-accused so far as grant of bail is concerned.

5. Without commenting on the merits of the case and on the basis of parity of the petitioner with the co-accused so far as grant of bail is

concerned, bail is granted to the petitioner on furnishing surety bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned.

6. The petition is allowed.
7. Since the main case has been decided, the pending application, if any is rendered infructuous.

03.08.2023
Jasmine Kaur

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No