

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

CRM-M-35839-2022

Date of decision: 12.01.2023

Harpreet Singh @ Happy

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Vishal Goel, Advocate
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

This petition has been filed under Section 439 Cr.P.C. seeking regular bail in a case bearing FIR No.120 dated 16.09.2021 under Section 15 of the NDPS Act, 1985 registered at Police Station Sadar Rajpura, District Patiala (Annexure P-1).

The learned State counsel has filed custody certificate along with reply dated 12.01.2023 by way of an affidavit of Sh. Surinder Mohan, PPS, Deputy Superintendent of Police, Sub-Division Rajpura, District Patiala, on behalf of the respondent-State and the same are taken on record.

The brief facts of the case are that on 15.09.2021, ASI Malwinder Singh along with ASI Gursharan Singh, SC Amritpal Chauhan, SC Harinder Singh on conveyance of government vehicle bearing No. PB-65-K-2442 driven by SC Harwinder Singh were patrolling in search of suspicious and bad elements were going from Rajpura to Sirhind Road, then on truck (tralla) bearing Registration No.PB65-N-5449 was seen

parked near AGM resort and one person was standing over the tool of the truck, was giving bag to another person. Both the persons were apprehended by the police party. Upon asking their name and identity, the person standing over the tool disclosed his name as Amrik Singh s/o Amarjit Singh r/o Village Ugana, PS Sadar Rajpura, District Patiala and the other person told his name as Harpreet Singh @ Happy (present petitioner) s/o Jaswinder Singh r/o village Ugana, PS Sadar Rajpura, District Patiala. It is further alleged that when ASI asked both the persons about the bag given by Amrik Singh to Harpreet Singh (present petitioner), they disclosed that it was poppy husk in the plastic bag and further told that there were two more bags of poppy husk in the tool of the truck. That upon checking all the three plastic bags, it was found that there was poppy husk in all the three plastic bags. Upon weighing the same with electronic scale, all the three bags having 20/20 kg of poppy husk and as such, total 60 kg of poppy was recovered in total.

On 02.12.2021, ASI Gurwinder Singh verified the truck bearing registration No.PB-65-N-5449 from RTA office, Mohali and it came to light that the number was registered on the scooter make Honda Activa in the name of Kuljit Kaur w/o Karamjit Singh r/o H.No.9, phase 3A, SAS Nagar. On dated 10.12.2021, upon verifying the original number of the truck i.e. PB-65-N-5495 from RTA office, it was registered in the name of Amrik Singh. As the above said number used on the truck was found to be false, hence offence under Section 473 of IPC was added in the present case.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case and he is in

custody since 16.09.2021. He further submits that nothing is to be recovered from the petitioner and the alleged recovery of 60 kg (20 kg each in 03 bags) of poppy husk from both the petitioners fall under intermediate quantity and he is not involved in any other case and no fruitful purpose would be served in keeping the petitioner in custody. He further contends that the quantity so recovered is less than the commercial quantity and thus, bar of Section 37 of the NDPS Act, 1985 will not be attracted. It has been further asserted that in the case of 'The State of Haryana Vs. Samarth Kumar' 2022 Live Law (SC) 622, recovery effected was more than the commercial quantity, thus, there was bar under Section 37 of the NDPS Act. He further submits that challan has been presented, charges have been framed and out of 11 prosecution witnesses, none has appeared. Now the case is fixed for prosecution witnesses for 14.02.2023. The petitioner is not involved in any other case.

The learned State counsel could not refute the contentions raised by learned counsel for the petitioner and while relying upon the status report, submits that the petitioner is not involved in any other case.

Heard counsel of both the parties and perused the records.

Keeping in view the period of incarceration of 01 year 03 months and 23 days and since the challan has already been presented against the petitioner, charges have been framed and out of 11 prosecution witnesses, none has examined and the case is fixed for prosecution witnesses for 14.02.2023, the likelihood of trial being prolonged, the present petition is allowed. Culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Thus, without commenting upon the merits of the case,

the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

The petition stands disposed off accordingly.

12.01.2023
Neha

(NAMIT KUMAR)
JUDGE

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