

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36523-2023
Date of Decision:-29.08.2023

UPINDER KUMAR

... Petitioner(s)

Versus

STATE OF PUNJAB

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Vikram Jeet Singh, Advocate
for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab.

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KARAMJIT SINGH, J. (Oral)

1. This is the second petition filed by the petitioner for grant of regular bail in case having FIR No.231 dated 28.09.2022 registered under Section 15 of NDPS Act at Police Station Mandi Gobindgarh, District Fatehgarh Sahib.
2. The brief facts of prosecution case are that 52 kilograms of poppy-husk was recovered from auto-rickshaw owned by Chandan Kumar, driven by Munna Kumar and the present petitioner was travelling on the front seat of the said three-wheeler. The aforesaid contraband was recovered from the back seat of the said auto.

3. The counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and even otherwise the present recovery is marginally higher than the commercial quantity and the petitioner is in custody since 28.9.2022 and co-accused Munna Kumar and Arvind Kumar are already enlarged on bail by the Coordinate Bench of this Court vide order dated 28.8.2023 having CRM-M Nos.53212, 3896, 20611 of 2023 and that trial is not progressing ahead as one 1 witness has been examined out of total 12 witnesses on behalf of the prosecution and prayed that the petitioner be released on regular bail.
4. The instant petition is opposed by the State counsel, who on instructions from SI Balwinder Singh has not disputed the custody period of the petitioner and that the co-accused of the petitioner have been already been granted concession of regular bail by the Coordinate Bench of this Court and further submits that in the instant case commercial quantity of contraband was recovered from the back seat of auto-rickshaw, in which, the petitioner was travelling and thus rigors of Section 37 of the Act are applicable to the present case. The State counsel further submits that case is progressing ahead as 1 witness has been examined by the prosecution. However, the State counsel prayed for dismissal of the petition.
5. I have considered the submissions made by counsel for the parties.
6. The present case is relating to recovery of 52 kilograms of poppy-husk, which is considered to be marginally higher than the commercial quantity. It is a moot point as to whether the alleged contraband

recovered from the back seat of auto-rickshaw, in which the petitioner and his co-accused were travelling, is considered to be recovered from conscious possession of the petitioner. The petitioner is in custody for the last more than 11 months and the trial is not progressing ahead as till date only 1 witness out of total 12 witnesses has been examined on behalf of the prosecution. Further similarly situated co-accused Munna Kumar and Arvind Kumar are already enlarged on bail by the Coordinate Bench of this Court.

7. In the given circumstances, it will take considerable time for the trial to conclude. Thus, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned

29.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

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