

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-43813-2021 (O&M)

Date of Decision: 24.1.2023

Manjit Singh Fauji

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. M.S.Nagra, 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 of NDPS Act (Section 29 of NDPS Act added later on) at Police Station Sadar Raikot, District Ludhiana.

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 Pala Singh were traveling and after their arrest, another 48 kg. of poppy husk was recovered from open space near the house of co-accused Pala Singh.

Counsel for the petitioner *inter alia* contends that the petitioner is falsely implicated in the present case and the police has failed to connect the car from which 22 kg. of poppy husk is alleged to be recovered, with the petitioner as the same is not owned by him. He further submits that the

prosecution has also failed to establish that the place from where another 48 kg. of poppy husk is stated to be recovered, belongs to the petitioner. Said recovery is from open space and the prosecution has failed to establish conscious possession of the petitioner over the said 48 kg. of contraband. Counsel for the petitioner further submits that the petitioner is behind the bars for the last more than 1 year and 7 months and the trial is not proceeding ahead. So, prayer is made for grant of regular bail to the petitioner.

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) No.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 (c) of NDPS Act.

Present petition is opposed by the State counsel. Short reply filed on behalf of the State by way of affidavit of Prabhjot Kaur, DSP, Raikot, District Ludhiana (Rural) is ordered to be taken on record.

As per the case of the prosecution, 22 kg. of poppy husk was recovered from a car wherein the petitioner was traveling along with Pala Singh. The said contraband comes under non-commercial quantity as per provisions of the NDPS Act. It is a matter of evidence as to whether another recovery of 48 kg. of poppy husk from an open space not belonging to the petitioner, is to be considered from the conscious possession of the petitioner. Further, as per custody certificate furnished by the State counsel, the petitioner is behind the bars for the last more than 1 year and 7 months and is having no criminal history.

It will take time for conclusion of trial as only 4 witnesses stand examined out of total 14 witnesses of the prosecution as has been apprised by the State counsel.

In view of above, it is a debatable issue as to whether rigors of Section 37 of NDPS Act will be applicable to the case of the petitioner. Thus, no useful purpose is going to be served by keeping the petitioner in custody for any further period.

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 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

January 24, 2023
Paritosh Kumar

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