

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-42329-2022 (O&M)

Date of Decision: 28.3.2023

Raja Kumar Bhagat

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. C.L.Pawar, Addl. AG, Punjab

KARAMJIT SINGH, J.

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.2 dated 6.1.2021 registered for the offences punishable under Sections 18, 25, 29 of NDPS Act at Police Station Cantt, Jalandhar City, District Jalandhar.

Counsel for the petitioner submits that as per allegations appearing on the record, 26 polythene bags each containing Opium were recovered from the stepney of the Tata Sumo No.JH 05 AP 8743 in which the petitioner, Krishna Rao and Poonam Devi Rao were traveling. He further submits that as per prosecution version, the aforesaid Opium on weighment came out to be 26 kg 110 grams. He further submits that it has also been recorded in the FIR that the said Opium weighing 26 kg 110 grams which was there in 26 polythene bags was collected in one plastic drum of blue colour and then the samples were separated and those samples

were sent for analysis to the concerned Laboratory. He further contends that even in the reply filed by way of affidavit of Ravinder Singh, Assistant Commissioner of Police, Sub Division V, Cantonment, Jalandhar on behalf of the State (in CRM-M-32287-2021), it has been specifically stated that 26 polythene bags containing Opium were recovered and on weighment, total Opium came out to be 26 kg 110 grams and the said Opium was put in blue colour drum and thereafter, the samples were separated.

Counsel for the petitioner submits that the aforesaid sampling procedure followed by the police was totally wrong and actually, the samples from each polythene bag should have been taken for the purpose of their chemical examination. He further submits that on this sole ground, the entire recovery proceedings stands vitiated. He further contends that even otherwise, the petitioner is in custody for the last about 2 years and 2 months and the trial is going at a snail's pace and as such, prayer is made for grant of regular bail to the petitioner.

In support of his contentions, counsel for the petitioner referred to judgment dated 13.3.2020 passed in Criminal Appeal No.1027 of 2015 titled **Amani Fidel Chris v. Narcotics Control Bureau** wherein Delhi High Court while dealing with a case under NDPS Act where samples were drawn after breaking small pieces from 8 polythene bags and the Investigating Officer prepared two samples of 25 grams each, observed that if it not practically possible to send the entire quantity, then sufficient quantity by way of samples from each of the packets of pieces recovered should be sent for chemical examination, otherwise the result thereon may be doubted.

The present petition is resisted by the State counsel who submits that the present case involves recovery of more than 26kg of Opium which was recovered from the vehicle in which the petitioner was traveling along with two other persons. State counsel further submits that the samples in this case were collected properly by the police officials in accordance with law and the said samples were sent to concerned Laboratory in sealed parcels and on examination, they were found to be that of Opium. He further submits that the trial is in progress and at this stage, no ground is made out to grant bail to the petitioner.

I have considered the submissions made by the counsel for the parties.

As per allegations appearing on the record, 26 polythene bags containing Opium were recovered from the vehicle in which the petitioner was traveling along with Krishna Rao and Poonam Devi Rao. From the perusal of the FIR as well as the reply filed by the State in the shape of affidavit of Ravinder Singh, Assistant Commissioner of Police, Sub Division V, Cantonment, Jalandhar (in CRM-M-32287-2021), it transpires that on weighment, the said Opium came out to be 26 Kg 110 grams and the same was put in blue colour drum and thereafter, the samples were collected. In FIR, there is no mention that the contents of 26 polythene bags which were put in blue colour drum, were thoroughly mixed and the mixture was made homogenous and thereafter, the representative samples were collected out of the said homogenous mixture. Even in the reply filed in the shape of affidavit of Ravinder Singh, Assistant Commissioner of Police, Sub Division V, Cantonment, Jalandhar (in CRM-M-32287-2021), it is not so mentioned. So, apparently, it appears that the substance/contraband

which was recovered from 26 polythene bags after it was removed from the said polythene bags, was not made homogenous by mixing it properly so as to collect the representative samples from the same. Further standing order No.1/88 dated 15.3.1988 issued by NCB in its para No.1.7, provides that number of samples to be drawn in each seizure case. In case of seizure of single package, container, one sample in duplicate is to be drawn and normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.

So, in light of the judgment in **Amani Fidel Chris's** case (supra) which has been relied upon by the counsel for the petitioner and the aforesaid standing order, this Court is of the view that apparently, proper procedure was not followed by the police while separating samples, as by mixing contents of 26 polythene bags before drawing any sample, the original sanctity of the case property in individual polythene bag was lost. Further the prosecution has failed to clarify as to how much each polythene bag was weighing.

As per custody certificate furnished by the State counsel, the petitioner is in custody for the last more than two years and two months and is not involved in any other case under NDPS Act and till date, only 4 prosecution witnesses are examined out of total 13 and it will take considerable time for conclusion of the trial. Further, there is nothing on record to show that the petitioner is likely to commit any such offence in future while on bail.

As has been contended by the counsel for the petitioner that proper procedure has not been followed by the Investigating Officer while separating samples in the present case, the veracity of the prosecution case

against the petitioner comes under doubt. So, parameters of bail available under Section 37 of NDPS Act appear to have been satisfied in the present case.

Consequently, without expressing any opinion 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

March 28, 2023
Paritosh Kumar

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