

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-44917-2022

Date of Decision: 9.5.2023

Naresh Kumar @ Tilla

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Kanwar Inder Singh, Advocate
for the petitioner.

Mr. C.L.Pawar, Addl. AG, 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.133 dated 20.7.2003 registered for the offences punishable under Sections 15, 25, 29 of NDPS Act at Police Station Bhawanigarh.

2. As per allegations, on 20.7.2003, two vehicles were seen coming and they were signaled to stop by members of the police party headed by SI Sukhdev Singh, on which, the occupants of both the said vehicles stopped the same at some distance and then fled away in the fields and they succeeded in escaping. On checking, jeep was having registration No.RJ18-T-0300 while Ambassador car was having No.RJ-18-T-0246 and in total, 132 kg of poppy husk was recovered from both the said vehicles. During investigation, one Naveen Kumar was arrested and he faced trial and was acquitted by the Court concerned vide judgment dated 9.9.2009

(Annexure P-3) while the petitioner was declared as proclaimed offender

and was arrested on 17.7.2022.

3. Counsel for the petitioner *inter alia* contends that FIR in this case was registered against unknown persons for transporting poppy husk in the aforesaid two vehicles. He further submits that the petitioner was not named in the FIR and was named as accused on the basis of statement recorded by one Labh Singh. He further submits that said Labh Singh, while appearing in the witness box, failed to support the case of the prosecution and consequently, co-accused Naveen Kumar was acquitted. He further submits that the aforesaid two vehicles were not owned by the petitioner and further, in the present case, there was complete violation of the mandatory provisions of Section 42 of NDPS Act. She further submits that no test identification parade was conducted and as such, the identity of the petitioner is not established. He further contends that the trial is not progressing ahead. So, prayer is made that the petitioner be released on bail.

4. Present petition is resisted by the State counsel who submits that on 20.7.2003, two vehicles were spotted by the police officials and they were signaled to stop but in the meantime, all the occupants of both the vehicles fled away while leaving behind the vehicles. On checking of both the vehicles, 132 kg of poppy husk was recovered. He further submits that during investigation, the police recorded statement of one Labh Singh, as a result of which, the petitioner and other persons were named as accused. Co-accused Naveen Kumar was arrested and he faced trial but in the meantime, the petitioner was declared as proclaimed offender and was arrested on 17.7.2002. However, the State counsel has not disputed the fact that the trial is not progressing ahead and further, co-accused Naveen Kumar who faced trial was acquitted vide judgment dated 9.9.2009

(Annexure P-3).

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

6. Admittedly, FIR in this case was registered against unknown persons and thereafter, all the accused were named on the basis of the statement of one Labh Singh and co-accused Naveen Kumar was arrested and he faced trial and was acquitted vide judgment Annexure P-3 as material witness Labh Singh failed to support the case of the prosecution. The identity of the petitioner is matter of evidence and it will take considerable time for the trial to conclude and the petitioner is in custody since 17.7.2022. It is also subject matter of the trial Court as to if the alleged recovery was effected in violation of the mandatory provisions of Section 42 of NDPS Act. As admitted by the State counsel, the petitioner was not owner of the vehicles in question which were recovered by the police from the place of recovery.

7. In the given circumstances, no fruitful purpose is going to be served by keeping the petitioner in custody for any further period.

8. In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on regular 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

May 9, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No