

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-47859-2022 (O & M)****Date of decision: 13.03.2023**

Sukhwinder alias Sukha

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vikas Bishnoi, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.639 dated 27.07.2022 under Section 15 of the NDPS Act at Police Station Azad Nagar, Hisar.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Sukhwinder Singh @ Sukha (petitioner), Raju Singh, Rajender Singh @ Raju (since granted bail vide order dated 02.03.2023 passed in CRM-M-47528-2022) and Karamjeet Singh were dealing in the sale of poppy husk. They had brought a huge quantity of poppy husk in bags from Rajasthan and were sitting alongwith the said bags near the General Chopal at Village Muklan and were waiting for some transport for going to Punjab. If a raid was conducted, they could be apprehended with the contraband.

3. Upon the said information, the police party reached the place as informed by the secret informer and saw four persons sitting with the bags. On suspicion, they were asked about their identity and they disclosed their names as Sukhwinder Singh @ Sukha (petitioner), Raju Singh, Rajender Singh @ Raju and Karamjeet Singh. After complying with the provisions of the Act, the search of the bags was conducted and 52 kgs. 500 grams of poppy husk were found contained in the seven bags.

4. The learned counsel for the petitioner contends that there is a violation of the mandatory provisions of the Act regarding the search and seizure. No independent witness of recovery was joined during the course of search and seizure. Since the recovery was marginally above the commercial quantity of 50 kgs. and the petitioner was a first-time offender, he was entitled to the grant of bail. Even otherwise, a similarly situated co-accused, namely, Rajender Singh @ Raju had been granted the concession of bail vide order dated 02.03.2023.

5. The learned counsel for the State while opposing the bail application contends that the offences of this kind are on the rise and commercial quantity of contraband has been recovered from the accused because of which Section 37 of the Act would be a bar to the grant of bail. He, however, admits the fact that the co-accused, namely, Rajender Singh @ Raju has been granted the concession of bail.

I have heard the learned counsel for the parties.

6. In the cases of '**Sukhchain Singh @ Manga Versus State of Punjab, CRM-M-7857-2022 decided on 04.04.2022, Pardeep Singh versus State of Punjab, CRM-M-46244-2022 decided on 19.01.2023, Hari Yadav**

11.11.2022, ‘Jang Kanwar Versus State of Punjab (CRM-M-53415-2021)’
decided on 19.01.2022, ‘Shankar Prashad Chanau Versus The State of
Punjab, CRM-M-24090-2020, decided on 27.08.2020, Gurpreet Kumar
Versus State of Punjab, CRM-M-17021-2021, decided on 31.08.2021,
Salim Versus State of Haryana, CRM-M-42436-2020, decided on
24.02.2021, Gagandeep Versus State of Punjab, CRM-M-3055-2021,
decided on 27.01.2021, Gurpreet Singh @ Gopi Versus State of Punjab,
CRM-M-41039-2019, decided on 26.02.2020, Dalbara Singh Versus State
of Punjab, CRM-M-47880-2022 decided on 16.01.2023’, and Vivek Watts
versus State of Punjab, CRM-M-13791-2022 decided on 15.02.2023, where
the recovery from the accused was marginally above the commercial
quantity for the respective contraband in each case, the Court granted bail to
the accused therein.

7. In the present case, the alleged recovery from the petitioner and his co-accused is of 52 kgs. 500 grams of poppy husk, which is marginally above the commercial quantity of 50 kgs. The petitioner is a first time offender with no other case under the NDPS Act registered against him. In this situation, the provisions of Section 37 of the NDPS Act can be relaxed to an extent and the case of the petitioner can be considered for the grant of bail, moreso, when he is in custody since 27.07.2022, none of the 14 prosecution witnesses have been examined so far and his co-accused, namely, Rajender Singh @ Raju has been granted the similar relief.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Sukhwinder alias Sukha is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

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9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any other case except the present one.

9. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

March 13, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No