

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-48271-2023
Reserved on:05.12.2023
Pronounced on:11.12.2023

HANUMAN RAM

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Ishan Gupta, Advocate,
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 439 CrPC, petitioner prays for grant of regular bail in case FIR No.31 dated 02.03.2023 registered at Police Station Sadar Ludhiana, District Ludhiana under Sections 18 of the Narcotics Drugs and Psychotropic Substances Act (Act N: 61 of 1985) [for short 'the NDPS Act'].

2. As per prosecution allegations, 2.600 Kg of opium was recovered from the possession of petitioner-Hanuman Ram and co-accused Dhanraj on 02.03.2023 and that the recovered contraband falls in the commercial category.

3. Ld. counsel for the petitioner contends that the petitioner has been falsely implicated; that he has no criminal antecedents and that the case of prosecution is not sustainable on account of violation of standing order No.1/89 and Rule 11(1) of the Narcotic Drugs and Psychotropic Substances

(Seizure, Storage, Sampling and Disposal) Rules, 2022 [for short ‘the Rules, 2022’]. Elaborating, ld. counsel contends that minimum quantity of 24 grams in case of opium is required to be taken for the purpose of sampling, but in the present case only 20 grams was taken as sample and so, mandatory provisions of the Rules, 2022 have been violated and so, certificate under Section 52A of the Narcotics Drugs and Psychotropic Substances Act, 1985 [for short ‘the NDPS Act’] regarding inventory becomes inadmissible.

4. (i) Ld. State counsel opposes the bail petition by pointing out that recovered quantity of contraband falls in the commercial category. However, it is conceded that as per the status report filed by the respondent-State, two samples weighing 20 grams each were drawn, when the contraband along with accused were produced before the Magistrate.

(ii) Ld. State counsel submits that Rule 11 of the Rules, 2022 is directory in nature and that there is nothing in the report of the FSL to point out that quantity of sample was insufficient to carry out necessary analysis and therefore, no benefit can be given to the petitioner.

5. I have considered submissions of both the sides and have appraised the record.

6. The Rules, 2022 have been enacted by the Central Government in exercise of the powers conferred by Section 76 to be read with Section 52A of the Act. Rule 11(1) of the Rules, 2022, which provides that except in cases of opium, ganja and charas (hashish), where a quantity of not less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample. It is only in case where the seized quantity is less than

the required quantity for sampling, the whole of the seized quantity may be sent for necessary analysis.

7. In the present case, recovered quantity of contraband is stated to be 2.600 Kg, which is much more than 24 grams, which is required for drawing the sample and as in this case, samples of 20 grams each were drawn so obviously, it is in violation of Rule 11 of the Rules, 2022.

8. Apart from the aforesaid violation, the custody certificate reveals that petitioner is in custody for the last 9 months and 4 days. He has no criminal antecedents. Challan has already been filed after completion of investigation on 14.06.2023 and case is now fixed for 18.12.2023 for prosecution evidence. Thus, trial is likely to take long time to conclude.

9. Having regard to all the above facts and circumstances, but without commenting anything further on merits of the case, petition is allowed. Petitioner is admitted to regular bail on his furnishing requisite bail bonds and surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

11.12.2023

Vivek

1. Whether speaking/reasoned?

2. Whether reportable?

Yes

No

(DEEPAK GUPTA)
JUDGE