

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

**CRM-M-56284-2022**

**Date of decision : 17.03.2023**

**Harmesh Lal @ Raju**

**..... Petitioner**

**versus**

**State of Punjab**

**....Respondent**

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

**\*\*\***

Present :- Mr. G.S. Randhawa, Advocate  
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

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**RAJESH BHARDWAJ, J. (Oral)**

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.146 dated 14.07.2022, under Section 15 of NDPS Act, 1985, registered at Police Station Kotwali Patiala, District Patiala.

As per facts of the case, a secret information was received by the police to the effect that Harmesh Lal @ Raju (petitioner) used to bring poppy husk from the other states and he used to sell the same in Patiala City and on the basis of the secret information received, *naqa* was laid and thereafter, at about 11:00 AM, one Canter bearing No.PB10CU2089 was stopped and on asking, the driver disclosed his name to be Harmesh Lal @ Raju. A notice under Section 50 of NDPS Act was given and the truck was searched and on search of the plastic bag, 51 kg and 500 grams of poppy husk was recovered including the weight of plastic bag. On the basis of the same, FIR was registered and the petitioner was arrested on spot. Sample was drawn and sent to the FSL. The petitioner approached

the learned Judge, Special Court, Patiala praying for grant of bail. However, after hearing counsel for both the sides, learned Judge, Special Court, declined the same vide order dated 01.11.2022. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He submits that as per the case of the prosecution, recovery was effected on the basis of secret information. However, there is clear violation of Section 42 of NDPS Act as the provisions of the same have not been complied with, he further submits that the recovery was made from the public place and the petitioner was driving the Truck. He submits that no independent witness was joined. Even otherwise, he has submitted that the recovery is allegedly made from the plastic bag lying in the back side of the truck and thus, conscious possession of the petitioner was not even proved. He submits that the petitioner has no criminal antecedents and thus, his falsely implication is evident. He further submits that the weight of the contraband recovered has been found to be 51 kg 500 grams including the weight of the plastic bag and thus, it is debatable whether the recovered material falls in the category of commercial or non-commercial quantity. He submits that if the weight of the plastic bag is taken out from the total weight then the total amount is just marginally above the commercial quantity and the recovered contraband would fall in the non-commercial quantity. Thus, provisions of Section 37 of NDPS Act would also be not attracted.

Learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the recovery had been made on

the basis of secret information received which was specifically about the petitioner. He has submitted that on receipt of the same, the investigating agencies duly complied with Section 42 of NDPS Act and the petitioner was arrested on the spot. He has submitted that the recovery falls in the category of commercial quantity and thus, provisions of Section 37 of NDPS Act would be attracted. He submits that as per the instructions received, the petitioner has no criminal antecedents as he has not been involved in any other similar case. He has submitted that the investigation is complete, challan is presented and the charges are also framed.

I have heard counsel for the parties and perused the record. The alleged recovery made from back side of the truck which was being driven by the petitioner is 51 kg and 500 grams of poppy husk including the weight of the plastic bag, which is marginally above the commercial quantity. As submitted before this Court, the petitioner has no criminal antecedents. Whether provisions of Section 37 of NDPS Act are attracted is also debatable. Admittedly, the petitioner has no criminal antecedents as there is nothing on record to show that he is earlier also prosecuted in any case of similar nature. The investigation is complete and the charges are also framed.

The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficiently long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant

of regular bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

( RAJESH BHARDWAJ )  
JUDGE

17.03.2023  
*m.sharma*

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |