

2024:PHHC:046617

206(A) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CRM-M-5701-2024
Date of Decision:05.04.2024

OWAIS AHMAD
....Petitioner

VERSUS

STATE OF PUNJAB
....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Raj Kumar Gupta, Advocate
 for the petitioner.

Mr. Randhir Singh Thind, DAG, 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.82 dated 21.07.2023 registered for the offences punishable under Sections 15, 61 and 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Division No.1, District Jalandhar.

2. As per the allegations appearing in the FIR, on 21.07.2023 police apprehended present petitioner along with Swift car bearing No. JK 01 AN 6372, co-accused Manpreet Singh along with Maruti car No. PB 10 V 0502 and another co-accused Farakat Ahmed along with Truck No. JK 01 AT 1026. That on search of the Swift car, 40.325 Kg of poppy husk stored in two bags was recovered and with regard to said recovery separate recovery memo was prepared. In the similar manner, search of Maruti car was effected which resulted into recovery of 50.186 Kg of poppy husk contained in three bags was recovered and with regard to said recovery effected from co-accused Manpreet Singh separate recovery memo was prepared. In the same manner, on search of Truck No.

JK 01 AT 1026, 140.72 Kg of poppy husk contained in seven

bags was recovered regarding which separate recovery memo was prepared in the name of co-accused Farakat Ahmed. All the aforesaid accused were arrested at the spot and on completion of investigation, challan stands presented and charges are also framed.

3. Counsel for the petitioner submits that the petitioner has been falsely implicated in the present case and is in custody for the last more than 8 months and is having no criminal history and on completion of investigation, challan stands presented and charges are framed but it will take time for trial to conclude. Counsel for the petitioner further submits that it was not a composite recovery as separate recovery memos were prepared and as per the recovery memo relating to present petitioner 40.325 Kg of poppy husk was recovered from the Swift car owned by him and separate recovery memos were prepared regarding recoveries effected from co-accused Manpreet Singh and Farakat Ahmed. It is further submitted that the aforesaid recovery of 40.325 Kg of poppy husk comes under non-commercial quantity and thus stringent provisions of Section 37 are not applicable to the same. So, prayer is made that petitioner be released on regular bail during pendency of the trial.

4. Present petition is resisted by State counsel, who submits that no doubt recovery effected from the car owned by petitioner comes out to be 40.325 Kg of poppy husk but at the same time recovery effected from car of co-accused Manpreet Singh and Truck of co-accused Farakat Ahmed comes under commercial quantity and that the present petitioner was using ATM of co-accused Manpreet Singh. It is further submitted that at this very initial stage the petitioner is not entitled to concession of regular bail even if he is having no criminal history and is incarcerated for last more than 8 months.

5. Counsel for the petitioner while rebutting the aforesaid contentions raised by the State counsel submits that even the trial Court while framing the charges against all three accused segregated aforesaid three recoveries and present petitioner is charged only with regard to recovery of 40.325 Kg of poppy husk and the copy of the aforesaid charge sheet is taken on record.

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

7. It is a matter of evidence as to whether all three recoveries are to be clubbed together or are separate as has been done by the trial Court while framing the charges. Even from the perusal of the police record which is produced today, it is apparent that separate recovery memos were prepared by the Investigating Officer at the time of effecting aforesaid recoveries and as per the recovery memo relating to present petitioner only 40.325 Kg of poppy husk appears to have been recovered from the car of the petitioner at the spot.

8. In the given circumstances, it is a moot point as to whether the recovery effected from co-accused Manpreet Singh and Farakat Ahmed is also to be included in the recovery of non-commercial quantity of contraband effected from the present petitioner.

9. Admittedly, the petitioner is in custody for the last more than 8 months and is having no criminal antecedents and it will take time for the trial to terminate. Thus, no useful purpose will be served by prolonging the judicial custody of the petitioner for any further period.

10. For the foregoing reasons, 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.

05.04.2024
Priyanka Thakur

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No