



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-33168-2024

Date of Decision:-02.08.2024

Harwinder Singh @ Binder.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Parmod Chauhan, Advocate for the Petitioner.

Mr. Prabhdeep Singh Dhaliwal, Assistant Advocate General,
Punjab.

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 bearing FIR No.103 dated 03.04.2024 under Sections 18, 61 and 85 of the NDPS Act registered with Police Station SAS Nagar Mohali.

2. The brief facts of the case are that a secret information was obtained by the investigating officer that Harwinder Singh @ Binder is cultivating Opium Poppy (plants) in his agricultural fields. If a raid was conducted, opium poppy plants could be recovered in heavy quantity.

3. Based on the secret information, the fields of Harwinder Singh @ Binder were raided and 447 plants were found growing in his fields containing 870 fruiting tops.

4. The learned counsel for the petitioner contends that as per the

NDPS Act, “opium poppy” is defined in Section 2(xvii) as follows:-



“ opium poppy means---

- a) The plant of the species Papaver somniferum L; and*
- b) The plant of any other species of Papver From which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act.”*

Section 18 of the NDPS Act prescribes the Punishment in relation to opium poppy and opium is reproduced as follows:-

“18. Punishment for contravention in relation to opium poppy and opium--- *Whoever, in contravention of any provision of this Act or any rule or order made for condition of license granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-state, exports inter-state or uses opium shall be punishable---*

a) Where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to (one year), or with fine which may extend to ten thousand rupees, or with both;

b) Where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupee.

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

c) In any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees”.

5. As per the learned counsel for the petitioner, the alleged recovery is of green poppy plant which is a growing plant and it would grow till the stage of germination and harvesting, and thus, there is no measure of small quantity or commercial quantity for opium poppy. Consequently, an



offence for cultivating opium poppy would be only covered by Section 18(c) of the NDPS Act and because of this reason, opium poppy is not mentioned in the table appended to the Act specifying the small and commercial quantities. Therefore, the recovery of any quantity of opium poppy would have been covered under non-commercial quantity and in these circumstances, the bar of Section 37 of the NDPS Act would not apply in the instant case.

6. The learned counsel for the petitioner relies upon the judgments passed in the cases of “*Gurcharan Singh versus State of Haryana (CRM-M-15417-2015 decided on 05.10.2016)*, *Amrik Singh versus State of Haryana (CRM-M-13254-2020 decided on 09.07.2020)*, *Subash Vs. State of Haryana (CRM-M-7292-2022 decided on 24.02.2022)* and *Avtar Singh Vs. State of Punjab (CRM-M-18795-2022 decided on 28.07.2022)*”.

7. Notice of motion.

8. Mr. Prabhdeep Singh Dhaliwal, Assistant Advocate General, Punjab, who is present in the Court, accepts notice on behalf of the respondent-State. He opposed the prayer for the bail stating that such kind of offences are on the rise and the petitioner does not deserve the concession of bail.

9. I have heard the learned counsel for both the parties.

10. This Court in the case of *Gurcharan Singh (supra)* has held as under:-

“ Counsel for the petitioner has argued that the petitioner has been in custody for about four months. Bail application of the petitioner has been rejected by the trial Court holding that the quantity recovered is commercial quantity. As per the learned counsel, this is a complete mis- interpretation of the NDPS Act (for short “the Act”). Section 18 of the Act deals with offences related to opium and opium poppy. The same is quoted as below:-

“18. Punishment for contravention in relation to opium poppy



and opium. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable :

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.”

Counsel for the petitioner has argued that there is no measure of small quantity or commercial quantity for opium poppy because it is in fact a growing plant and would be so even at the stage of germination and till the stage of harvesting. Consequently, an offence for cultivating opium poppy would only be covered by Section 18-C of the Act. In the Table annexed with the Act it is clarified that with respect to cultivation of opium poppy the expression 'small quantity' and 'commercial quantity' is not relevant and the offence is to be covered under Section 18-C of the Act and, therefore, recovery of any quantity of opium poppy would have to be covered under non commercial quantity. I find this to be so. I, however, find that very interestingly there is similar provision with regard to cannabis plant and cannabis viz Section 20 of the Act, which is quoted as below :-

“20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable; (I) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and



(ii) where such contravention relates to sub-clause (b),
(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;
(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;
(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

In respect of cannabis plant no separate provision has been made in the notification. However, on drawing an analogy with the provision relating to opium poppy, it would have to be held that for the seizure of cannabis plant also, the quantity would fall within non-commercial quantity despite the fact that there is no provision therefor in the Schedule.

Coming back to the present case, in my opinion, once it is held that recovery of opium poppy has to necessarily fall within the ambit of non-commercial quantity, bar of Section 37 of the Act would not apply and keeping in view the recovery (12 kgs) and the period of custody undergone by the petitioner, I do not deem it appropriate to deny the concession of regular bail to the petitioner. Bail to the satisfaction of the trial Court/Duty Magistrate. CRM-M No.15417 of 2015 stands disposed of.”

The aforesaid judgment has been followed by this Court in the cases of **Amrik Singh, Subash and Avtar Singh (Supra)**.

11. As the petitioner is a first time offender, in custody since 3.4.2024, none of 16 Pws have been examined so far and keeping in view the dictum laid down in the aforesaid judgments, the further incarceration of the petitioner is not required.



12. Thus without commenting on the merits of the case, the present petitions are allowed and the petitioner-**Harwinder Singh @ Binder** son of Sh. Sarban Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

8. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the cases mentioned in this order.

9. In addition petitioner (or anyone 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.

10. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 02, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>