

CRM-M- 44153-2023 (O&M)

-1-

226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M- 44153-2023 (O&M)
Date of Decision: 04.01.2024

Birbal Khan alias Happy

... Petitioner

V/s.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Parminder Singh, Advocate and
Ms. Kamlesh, Advocate
for the petitioner.

Mr. Rajiv Verma, Dy. A. G., Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 07 dated 21.01.2023, under Sections 15, 29, 61 and 85 of NDPS Act, registered at Police Station Sadar Ahmedgarh, District Malerkotla.
2. At the very outset, learned counsel for the petitioner submits that he had earlier filed a bail petition before this Court which was dismissed as withdrawn on 28.07.2023. Learned counsel for the petitioner submitted that now there is a change of circumstances not only with regard to elongated custody but also the fact that the other main accused has

226

already been extended benefit of bail by the Co-ordinate Bench of this Court on 03.08.2023 vide Annexure P-2. Learned counsel also submitted that as per the allegations, the aforesaid co-accused namely Abdul Khan, who is driver and owner of the truck was apprehended along with the present petitioner, who is the brother of the aforesaid person and there has been a recovery of 54 kg of Poppy Husk from the truck. Learned counsel further submitted that the petitioner is in custody from 21.01.2023 which is 11 months and 15 days and the charges have already been framed on 08.11.2023. He further submitted that the alleged recovery of 54 kg of poppy husk is marginally higher than the commercial quantity as defined under the NDPS Act but it is yet to be ascertained at the time of trial as to what was the weight of two bags and as to whether the aforesaid quantity falls under the commercial quantity or not. He also submitted that be that as it may, now the other co-accused who is the driver and owner of the truck has already been extended benefit of bail by the Co-ordinate Bench vide Annexure P-2. The petitioner is not only at parity with the co-accused but is rather at a better footing and therefore, may be considered for grant of regular bail.

3. On the other hand, Mr. Rajiv Verma, learned D.A.G., Punjab has submitted that it is correct that the petitioner is in custody for 11 months and 15 days and now the charges have been framed but no prosecution witness has been examined till date. He has not disputed the parity of the petitioner with the co-accused, who has been granted bail by the Co-ordinate Bench. He has further submitted that the petitioner is the

226

brother of the co-accused and is involved in two more cases, therefore, he is not entitled for the grant of regular bail.

4. I have heard the learned counsel for the parties.
5. It is a case where the petitioner has already faced incarceration for 11 months and 15 days. In fact, the other co-accused who is driver and owner of the vehicle has already been extended benefit of bail on 03.08.2023 (Annexure P-2). This Court finds no reason to deny the bail to the petitioner considering the parity of the petitioner, which has not been disputed by the State counsel.
6. In view of the aforesaid facts and circumstances, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.
7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

04.01.2024

Seema

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking : Yes

Whether reportable : Yes/No