



223 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45327-2024

Date of decision : 11.12.2024

Jagjiwan

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Tarun Sharma, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.0026 dated 12.03.2024, under Section 15 of the NDPS Act, 1985, registered at Police Station Naggal, District Ambala.

2. Succinctly the facts of the case are that the police party while on patrolling on 12.03.2024 received a secret information to the effect that Jagjiwan Singh @ Jagga is involved in selling poppy husk and he was in his Canter No.PB11-DE-5833. If the raid is conducted, he could be arrested along with the contraband. On receiving the information, the police registered the FIR and the raid was conducted. A person was found in the Canter. On asking, he disclosed his name as Jagjiwan Singh @ Jagga. He was given the offer for the search. He was suspected to be carrying the contraband. Thereafter, search of the Canter was conducted and bags containing the poppy husk were recovered. On weighing, each sack was found to be 17/17 kg and thus, 51 kg of poppy husk was recovered. The accused-Jagjiwan Singh @ Jagga failed to produce any license for the possession of the same and thus, he was arrested on the spot. On



registration of the FIR, investigation commenced. The samples were sent to the FSL. Petitioner approached the Court of learned Additional Sessions Judge, Ambala praying for the grant of bail. However, finding no merit in the same, learned Additional Sessions Judge, Ambala, declined the same vide his order dated 25.04.2024. Hence, being aggrieved, petitioner is before this Court by way of filing the present petition.

3. It has been submitted by counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that the case against the petitioner has been registered on the basis of the secret information. However, there is violation of the mandatory provisions of Section 42 of the NDPS Act. He submits that while conducting the search, there is violation of Section 50 of the NDPS Act. He submits that petitioner has no criminal antecedents and the contraband has been planted upon him. He submits that even otherwise, the quantity more than 50 kg is commercial quantity whereas, from the possession of the petitioner, it has been shown to be 51 kg of poppy husk which is marginally above the commercial quantity. He submits that petitioner is behind bars since the date of his arrest. However, there is no progress in the trial till date.

4. Learned State counsel has placed on record the custody certificate. He, on instructions from SI Vinod, has submitted that the FIR was registered on due compliance of the statutory provisions and the petitioner was arrested on the spot. He submits that the quantity recovered from the petitioner falls under the commercial quantity and thus the provisions of Section 37 of the NDPS Act are attracted.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the FIR was registered on the basis of the secret information. The alleged recovery effected from the petitioner is 51 kg of



poppy husk. The custody certificate produced would show that the petitioner is behind bars from the last 08 months and 22 days. It further reflects that the petitioner has no criminal antecedents as he is not involved in any other case. As submitted, till date, out of 14 prosecution witnesses, only 01 witness has been examined.

6. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain's case (supra)**, this Court is of the opinion that the case of the petitioner is covered by the ratio laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"²² (also see



Donald Clemmer's 'The Prison Community' published in 1940²³). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.'

7. The veracity of the allegations would be assessed only after conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, 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.

11.12.2024
m.sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No