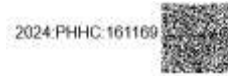


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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-52042-2024

Date of Decision :03.12.2024

CHARANJIT SINGH @ CHANNI

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Arjun Atri, Advocate
for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, the petitioner craves for indulgence of this Court for his being enlarged on regular bail, in case FIR No.112, dated 18.05.2023, under Sections 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Kotwali, District Patiala.

2. The case as set up by the prosecution, through the instant FIR, the relevant thereof is extracted hereinafter:-

“Today I along with ASISandeep Singh No. 2872/Patiala, Head Constable Ranjeet Singh No. 2282/Patiala, Senior Constable Harwinder Singh No. 1842/Patiala, Senior Constable Pritpal Singh No. 53/Patiala and Senior Constable Bikramjeet Singh 3354/Patiala boarded on the official vehicle PB-11-BY-6918 make Bolero, the driver of which is Head Constable Mandeep Singh No. 78/Patiala was busy in connection with the search and bad and suspicious

persons at the barricade of bridge of dirty drain near Marhia Ghalorhi Gate, Patiala, where during the course of barricade at about 12:13 PM, from the side of Shah Colony, a vehicle bearing No/ HR-51-BL-9311 make Creta of white colour was seen coming, the driver of which on seeing the police party standing on the front side all of sudden slowed down his vehicle and made attempt to turn reverse, I made attempt to apprehend whom with the assistance of the companion officials, then after stopping the above mentioned vehicle, one clean shaven youth after getting down ran towards backside, whom I chased with the assistance of the companion officials while running and the above mentioned going while running fell on the metalled road, on account of whose falling, he sustained injury on knee (abrasion), after apprehending whom with thus assistance of the companion officials, I enquired about name address, who on being asked disclosed his name as Charanjeet Singh alias Channi son of Bikramjeet Singh, (resident of Village Dilawarpur, Police Station Passiana, District Patiala. Thereafter I enquired about the reason for turning his above numbered vehicle and running after getting from the vehicle from the above mentioned Charanjeet Singh alias Channi, who said that while seeing the police standing ahead, I had been perplexed, because there is poppy husk in my vehicle, due to which I had made attempt to run in order to (sape from the police. Thereafter, I on account of matter being of NDPS Act, gave information from my mobile No. 95019-66411 on the mobile No. 95929-17965 to Moharrir Head Constable, CIA Staff, Patiala at about 12:25 PM regarding sending other competent officer for further investigation at the spot, on which he sent you along with ASISuraj Parkash No/ 607/Patiala at the spot for further investigation, I have got recorded my :tatement before you, gone through, heard, the same is correct. Sd/- Jaspal Singh SI. Attested Sd/- Gurdeep Singh SI, CIA Staff, Patiala dated 18.05.2023. POLICE PROCEEDING: Today myself SI along with ASISuraj ParkashNo. 607/Patiala was present at CIA Staff, Patiala, then Moharrir Head Constable ASI Ram Saroop No. 379/Patiala told myself SI that SI Jaspal Singh No. 1121/Patiala along with the police party busy in barricading was present at bridge of dirty drain near Marhia Ghalorhi Gate, Patiala, who during the course of barricade has since detained Charanjeet Singh alias Channi son of Bikramjeet Singh, resident of Village Dilawarpur, Police Station Passiana, District Patiala along with one vehicle bearing No. HR-51-BL-9311 make Creta of white colour, with whom there is apprehension of having poppy husk, you may go to the spot for taking action, on which myself SI aloing with ASISuraj Parkash No. 607/Patiala including Laptop and Printer reached at the spot on the private car bearing No. PB-11-BH-2898, where SI Jaspal Singh No. 1211/Patiala got typed his above mentioned statement before me, to whom I after typing the statement word by word, read over the same, who upon hearing and admitting the same to be correct appended his signature in Punjabi under his statement, to which myself SI attested and relieved SI Jaspal Singh No. 1211/Patiala from the spot. Thereafter myself SI while introducing me said to Charanjeet Singh alias Channi son of Bikramjeet Singh, resident of Village Dilawarpur, Police Station Passiana, District Patiala that I-SI Gurdeep Singh No. 364/Khanna have been deployed at CIA Staff

Patiala. On my uniform, the name place of the name of Gurdeep Singh in Punjabi has been affixed. I have suspicion regarding presence of some intoxicant substance in your vehicle bearing No. HR-51- BL-9311 make Creta of white colour, of which I want to conduct search. You have got legal right that you can also get conducted search of you and your vehicle bearing No. HR-51-BL-9311 make Creta of white colour from some Gazetted Officer or Magistrate, who can be called at the spot or you and your above numbered vehicle before them, who said that I have faith in you, you can conduct search of me and my vehicle bearing No HR-51-BL-9311 make Creta of white colour, on which the memo of consent of the above mentioned Charanjeet Singh alias Channi has been recorded under Section 50 NDPS Act, to which myself SI after typing the memo of consent statement read over the same, on which above mentioned Charanjeet Singh alias Channi after admitting the memo of consent statement to be correct appended signature in Punjab and the signatures of the witnesses were got appended. Thereafter myself SI made attempt to join sub private witness at the spot, but whichever persons met, he expressed his helplessness, nobody became ready to become private witness. myself SI officials with the assistance the search set of of the the above Thereafter companion mentioned Charanjeet Singh alias Channi into motion in accordance with law, on which from the dicky of the above numbered vehicle, 4 weighty plastic bags of white coloured and 2 weighty plastic bags lying on the back seat of the vehicle were recovered, regarding which mentioned Charanjeet Singh alias Channi the above has been enquired, who said that there is poppy husk in all these bags, on which after getting down all the bags from the above numbered vehicle with the assistance of the companion officials, on checking the opening all the bags, poppy husk was same after recovered therefrom. 4 plastic bags of poppy husk recovered from the dicky of the above numbered vehicle were marked No. 1, 2, 3 and 4 respectively and 2 plastic bags of poppy husk recovered from the back seat of the vehicle were marked as 5 and 6 respectively, on which myself SI directed Senior Constable Pritpal Singh No. 53/Patiala that he may bring weighing scale and one chair and table at the above numbered car of myself SI from CIA Patiala, on which on the instruction of myself SI, after about 15 minutes Senior Constable Pritpal Singh No. 53/Patiala after bringing (electronic) weighing computerized scale and chair, table came present at the spot. Then on weighing Bag No. 1, the same came out to be 20 kilograms poppy husk, on weighing Bag No. 2, the same came out to be 20 kilograms poppy husk, on weighing Bag No. 3, the same came out to be 20 kilograms poppy husk, on weighing Bag No. 4, the same came out to be 20 kilograms poppy husk, on weighing Bag No. 5, the same came out to be 15 kilograms poppy husk and on weighing Bag No. 6, the same came out to be 15 kilograms poppy husk along with bag. Separate parcels of above mentioned 6 plastic bags of recovered poppy husk were prepared. Thereafter myself SI sealed all the above mentioned parcels with my seal bearing inscription GS and attested all the parcels. Sample seal was prepared separately. The seal after use was over handed to ASI Suraj Parkash No. 607/Patiala. Thereafter, myself SI took all the above mentioned parcels duly sealed along with seal into police

possession memo vide being evidence. signatures of the witnesses were got appended on The the memo. Thereafter myself SI took the vehicle bearing NO. HR-51-BL-9311 of the above mentioned accused Charanjeet Singh alias Channi into police possession vide memo being evidence. The signatures of the witnesses were got appended on the memo. The above mentioned accused Charanjeet Singh alias Channi by keeping in his possession 110 kilogram poppy huska (one quintal 10 kilograms) has committed the offence under Section 15/61/85 ND&PS Act, on which the present statement regarding registration of tcase for the above mentioned offence against the above mentioned accused Charanjeet Singh alias Channi after being typed is hereby sent through Senior Constable Bikramjeet Singh No. 3354/Patiala to the Police Station Kotwali Patiala. After registering the case FIR number may be informed. Information may be given to the senior officers as well as control room. Special reports may be issued. Myself SI along with the companion officials is busy in the investigation at the spot. In the area of Bridge of dirty drain, near MarhiaGhalorhia Gate, Pata AT 04:00 PM. Latitude 30.319193, Longitude 76.410467. Sd/- Gurdeep Singh SIT, CIA Patiala dated 18.05.2023. On the present statement after registering the above numbered case for the above mentioned offence against Charanjeet Singh alias Channi son of Bikramjeet Singh, resident of Village Dilawarpur, Police Station Passiana, District Patiala, the entry has been got recorded in the records. After preparing copies of the FIR itself being special reports the same are sent through HC Charanjeet Singh 1699/Patiala to the Ld. Area Magistrate as well as Senior Officers. Information is being given to the Incharge Control Room Patiala..... ”

3. In asking for the relief (*supra*), learned counsel for the petitioner submits the petitioner has suffered incarceration of more than 1 year and 6 months, as on today. Though he is stated to be involved in one other criminal case under the NDPS Act, however, he is on bail in that case.
4. He further submits that the recovery alleged to be effected from the present petitioner in the present case is of 110 kgs of poppy husk.
5. He also submits that the trial is moving at a snail pace, as only 01 witness has been examined, till date by the prosecution, out of the

total 22 prosecution witnesses cited in the final report, therefore, further custody of the present petitioner is not warranted.

6. *Per contra*, the learned State counsel vociferously opposed the asked for relief of grant of regular bail to the petitioner and submits that the recovery effected from the present petitioner in the instant case, falls within the ambit of commercial quantity, as per the schedule attached to the NDPS Act, therefore, the vigor of Section 37 of the NDPS Act, would come in operation, and the present petitioner does not satisfy such condition, he being involved in one other case under the NDPS Act.

7. She has also placed on record a custody certificate *qua* the petitioner, which is taken on record, and a perusal of the same reveals that the petitioner has suffered incarceration of 01 year 06 months and 09 days, as on today.

8. She further submits, on instructions imparted to her by the police official concerned, that in the instant case final report was filed way back on dated 18.09.2023, and charges were framed on dated 18.11.2023, and out of the total 22 witnesses as cited by the prosecution in the final report, only one has been examined till date.

9. This Court has considered the rival submissions made by learned counsel for the parties concerned, and has gone through the entire case file, and is of the considered opinion that the instant petition is amenable for being allowed.

10. The reason for forming the above inference emanates from the factum that:

- (i) the petitioner has suffered incarceration of 01 years 06 months and 09 days, as on today;
- (ii) out of the total 22 prosecution witness, only one witness has been examined, till date;
- (iii) though the petitioner is stated to be involved in one more criminal case under NDPS Act, however, he is on bail in that case;
- (iv) no fruitful purpose would be served by keeping the petitioner behind the bars;
- (v) trial is not likely to conclude anytime soon;

11. The above view of this Court is fortified by the ratio of the judgment laid down in "**Rabi Prakash Versus The State of Odisha**", **Special Leave to Appeal (Criminal) No.4169 of 2023**, wherein the Supreme Court has discussed the effect of Section 37 of the NDPS Act in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent - State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

12. Considering the hereinabove made discussion, this Court deems it fit and appropriate to grant the concession of regular bail to the

petitioner. Therefore, without commenting upon the merits and circumstances of the present case, the present petition is **allowed**. The petitioner is ordered to be released on bail on furnishing of bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

13. However, anything observed here-in-above shall have no effect on the merits of the trial, and is only meant for deciding the present petition.

14. However, it is clarified that if in future, the petitioner is found indulging in commission of similar offences, as is involved herein, the respondent-State shall be at liberty to make an appropriate application seeking cancellation of regular bail, as granted by this Court.

15. All pending application(s), if any, also stand **disposed** of accordingly.

December 03, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No