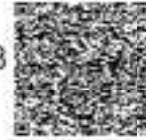


2024:PHHC:098853



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

**CRM-M-57961-2023
Date of Decision: 29.07.2024**

Jagjeet Singh @ Jagga

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Charanjit Singh, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab.

HARSH BUNGER J. (ORAL)

1. This is second petition filed under Section 439 of the Code of Criminal Procedure on behalf of petitioner (Jagjeet Singh @ Jagga) for grant of regular bail in case bearing FIR No.109 dated 24.06.2021 (Annexure P-1), under Section 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the N.D.P.S. Act'), registered at Police Station Sangat, District Bathinda.

2. Earlier petition bearing CRM-M No.32658 of 2021 filed under Section 439 of the Code of Criminal Procedure on behalf of the petitioner was dismissed by this Court vide order dated 02.05.2023.

3. Status report by way of affidavit dated 05.12.2023 of Ms. Heena Gupta, P.P.S., Deputy Superintendent of Police (Rural), Bathinda

has been filed on behalf of State of Punjab, which is already on record.

4. Custody Certificate dated 28.07.2024 of the petitioner is filed by learned counsel for the State in Court today, which is taken on record, subject to all just exceptions.

5. Succinctly, the aforesaid FIR was registered on the complaint of Sub Inspector Major Singh, who stated that on dated 24.06.2021, he alongwith fellow employees was present at Bus Stand of village Pathrala in a government vehicle for search and checking of suspicious persons, when at about 3:30 P.M. he received information on phone from Assistant Sub Inspector Darshan Singh that he along with fellow policemen while patrolling, have apprehended two persons namely, Jagjeet Singh @ Jagga Singh and Major Singh son of Ajit Singh along with *Tralla* bearing No.PB03X-9395 along with poppy husk; whereupon Sub Inspector Major Singh and other official reached at the spot and in the meanwhile Manpreet Singh son of Jagsharan Singh resident of Doomwali also reached at the spot. It was stated that after enquiring about the details of the apprehended persons, they revealed their names as Jagjeet Singh @ Jagga and Major Singh. Upon carrying out search in presence of witnesses, four plastic bags kept on the coal in the horse *tralla* (PB03X-9395) in possession of Jagjeet Singh and Major Singh was checked and poppy husk was found in the bags, which upon weighing came out to be 20 kgs. (each) along with plastic bag. *Tralla* (PB03X-9395) was in the name of Buta Singh son of Chand Singh. Total 80 kgs. poppy husk was stated to have been recovered from the possession of Jagjeet Singh and Major Singh. Accordingly, the abovesaid FIR was registered and petitioners were arrested.

6. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the instant case as he had refused

to pay illegal gratification. It is submitted that the mandatory provisions of the N.D.P.S. Act have not been complied with and the petitioner has no link with the alleged recovery. It is further submitted that the petitioner is not involved in any other case under the N.D.P.S. Act and he is in custody in this case since 24.06.2021; the investigation in this case is complete, challan stands presented on 01.10.2021 and charges have been framed on 15.12.2021; also, prosecution evidence in the case has got completed and statement of accused under Section 313 of the Code of Criminal Procedure has been recorded, so no useful purpose would be served by keeping the petitioner behind bars for indefinite period. Learned counsel for the petitioner states that the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court.

6.1 With the aforesaid submissions, learned counsel for the petitioner has prayed for grant of regular bail to the petitioner.

7. Per contra, learned counsel for the State has opposed the prayer of petitioner for grant of regular bail on the ground of seriousness of the offence. Learned State Counsel has submitted that the recovered contraband in this case falls under the category of “Commercial Quantity” and thus bar under Section 37 of the N.D.P.S. Act is attracted. It is further submitted that the prosecution evidence in the case is already complete and statement of the accused under Section 313 of the Code of Criminal Procedure stands recorded on 21.03.2024 and thereafter, due to the absence of defence witnesses, the matter has been adjourned thrice before the trial Court.

7.1 Learned counsel for the State submits that in case the petitioner is extended the benefit of regular bail then there is every likelihood that he may abscond and thus delay the conclusion of trial. Accordingly, prayer for dismissal of the present petition has been made.

8. I have heard learned counsel for the parties and perused the paper book as well as the status report and custody certificate of the petitioner.

9. The prosecution evidence in this case is already complete and the statement of accused under Section 313 of the Code of Criminal Procedure stands recorded on 21.03.2024; and now the proceedings are pending before the trial Court only for the defence evidence, and for that purpose, the matter has been adjourned on three dates.

10. Moreover, the alleged recovery (80 kgs. *poppy husk*) effected in this case falls under the category of “Commercial Quantity” and thus rigors of Section 37 of the N.D.P.S. Act are attracted. Recently, Hon'ble Supreme Court of India in “*State By The Inspector of Police v. B. Ramu*”, 2024(1) *Law Herald (SC)* 366, observed as under: -

“6. From the order reproduced supra, it is apparent that the learned Single Judge totally ignored the submission of the Public Prosecutor that the respondent-accused was arraigned in three more previous cases (two of which involve offence under the NDPS Act). Furthermore, the learned Single Judge also totally ignored the fact that the recovered ganja was well in excess of the commercial quantity as provided in the schedule to the NDPS Act.

7. During the course of submissions, learned counsel for the respondent vehemently and fervently contended that during the intervening period, the matter has progressed much ahead inasmuch as the investigation has been concluded and charge-sheet has been filed. Now the matter is posted for framing of charges against the accused.

8. Section [37](#) of the NDPS Act deals with bail to the accused charged in connection with offence involving commercial quantity of a narcotic drug or psychotropic substance. The provision is reproduced hereinbelow for the sake of ready

reference:-

"[37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail]"

9. A plain reading of statutory provision makes it abundantly clear that in the event, the Public Prosecutor opposes the prayer for bail either regular or anticipatory, as the case may be, the Court would have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail.

10. It is apposite to note that the High Court not only omitted to record any such satisfaction, but has rather completely ignored the factum of recovery of narcotic substance (ganja), multiple times the commercial quantity. The High Court also failed to

consider the fact that the accused has criminal antecedents and was already arraigned in two previous cases under the NDPS Act.

11. In case of recovery of such a huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents.

12. For entertaining a prayer for bail in a case involving recovery of commercial quantity of narcotic drug or psychotropic substance, the Court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act...”

11. Furthermore, the apprehension expressed by the State counsel that if released on bail, there is every likelihood of the petitioner trying to abscond to prolong the matter, cannot be brushed aside lightly.

12. Hence, keeping in view the aforementioned circumstances, I do not deem it fit to extend the concession of regular bail to the petitioner at this stage. Accordingly, the present petition is dismissed. Considering that the petitioner has been in custody since 24.06.2021, the trial Court is directed to expedite the proceedings in the instant case.

13. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

14. All pending application(s), if any, shall also stand closed.

29.07.2024

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No