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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56043-2024 (O&M)
Date of Decision:- 10.12.2024

HAPPU RAM

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present : Ms. Shehnaz Ali, Advocate for the petitioner.
Mr. Surender Singh, A.A.G. Haryana.

SANJIV BERRY, J. (ORAL)

1. Reply dated 09.12.2024 filed in the form of an affidavit of Deputy Superintendent of Police, H.S.N.C.B. Rohtak is taken on record. Copy thereof has been supplied to learned counsel for the petitioner.
2. Arguments heard.
3. The instant petition has been preferred by the petitioner under Section 483 Bharatiya Nagarik Suraksha Sanhita, 2023 for grant of regular bail to the petitioner in the following case :-

FIR No.	Dated	Sections	Police Station
55	17.09.2023	18(b) of the NDPS Act, 1985	GRP, Gurugram, District GRP Ambala Cantt.

4. It is, *inter alia*, contended by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in this case.



She submits that the petitioner is a retired serviceman having no criminal antecedents and is in custody since 17.09.2023. After the completion of investigation, challan has been presented in Court, as such, he is not required for further investigation. She further submits that co-accused Rashmi has been granted the concession of bail by this Court vide order dated 11.09.2024 passed in CRM-M-21200-2024 (Annexure P-3). Thus prays for grant of concession of bail to the petitioner.

5. *Per contra*, learned State counsel while referring to the reply submitted by the State has strongly assailed the arguments advanced by learned counsel for the petitioner by submitting that the petitioner was apprehended by the Police while carrying a bag in his conscious possession containing 4 kg 400 grams of opium after complying with the provisions, as contained in Section 50 of the NDPS Act. He contends that the case of co-accused Rashmi is distinguishable from the case of the petitioner, as no recovery of narcotics was effected from her. Hence, he prayed for dismissal of the bail petition as the recovery of contraband effected from the petitioner falls within the category of commercial quantity, as such, hit by the provisions of Section 37 of the NDPS Act.

6. After considering the rival contentions and perusing the record, it transpires that as per the case of prosecution, the petitioner along with co-accused Rashmi was apprehended by the Police party on 16.09.2023 and consequent upon their search being conducted in accordance with law, although no contraband was recovered from the possession of co-accused Rashmi, but from the possession of the present petitioner, 4kg 400 grams of



opium was found in the bag carried by him in his conscious possession. Accordingly, formal arrest was made. Admittedly, after the completion of investigation, challan has already been presented in Court, where it is pending for trial. From the perusal of the record, it transpires that 4kg 400 grams of opium was recovered from the conscious possession of the petitioner being kept in the bag carried by him and the same falls within the purview of commercial quantity, thus, hit by the provisions of Section 37 of the NDPS Act. Moreover, so far as reference to the order dated 11.09.2024 (Annexure P-3) is concerned, the petitioner cannot take the benefit of the same because admittedly no contraband was recovered from the possession of said co-accused Rashmi, whereas, the petitioner was found in exclusive possession of commercial quantity of contraband.

7. In these circumstances, considering the serious nature and gravity of offence involved and also the fact that commercial quantity of opium has been recovered from the petitioner, no case is made out in favour of the petitioner for grant of regular bail. Accordingly, the present petition is dismissed.

8. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

10.12.2024
S.Sharma(syr)

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |