

2024:PHHC:169915



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

Sr. No.242

CRM-M-59799-2024 (O&M)
Date of decision : 18.12.2024

Makhan Singh @ Gullu

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Manpreet Ghuman, Advocate for the petitioner
Through video conferencing.

Mr. R.S. Thind, DAG, Punjab.

KIRTI SINGH, J. (Oral)

The jurisdiction of this Court under Section 439 Cr.P.C. has been invoked for grant of regular bail to the petitioner in case FIR No.49 dated 24.08.2024, under Sections 15-C/61/85 of NDPS Act, 1985, registered at Police Station Sadar Rampura, District Bathinda.

2. The translated version of the FIR is reproduced below:-

“Office Incharge PS Sadar Rampura Fateh today ASI along with Senior constable Gurtej Singh 1989/Bathinda, Senior constable Harmanjit Singh 390/Bathinda and SC Balwant Singh No.874/Bathinda, PHG Resham Singh 10872 in official vehicle No.PB- 03AP-2318 driven by PHG Resham Singh 10872 along with laptop, printer which was operated by SCT Harmanjit Singh 390/Bathinda and investigation kit was going towards Khokhar Road from Village Chawke in connection with patrolling and checking of suspicious persons, when police party reached one KM from Village Chawke, police party saw a man sitting under the tree, having a plastic Polythene and on seeing the police party, then said man got panic and tried to slip from there after throwing the polythene, with the help of other police officers, ASI parked the vehicle and checked out the said polythene, the mouth of polythene was

2024:PHHC:169915



opened and the doda post is clearly visible so on instruction of ASI suspected was apprehended by police party and his name and address was asked. He told his name as Makhan Singh @ Gullu son of Jhanda Singh resident of Pati Kallan Chawke District Bathinda Thereafter I tried to join private witness from nearby, but every person showed his own compulsion, due to which private witness could not be joined. Thereafter ASI clubbed the all the doda post and keep it in same polythene, Recovered poppy husk was weighted on weight and it was 600gm along with plastic Polythene. Thereafter, makhan Singh @ Gullu could not produced any License ASI put recovered poppy husk in another plastic bag and prepared a parcel. The empty plastic bag was put in another plastic bag and parcel was prepared. Thereafter ASI put Seal seal PK on the parcel and prepared a sample seal. After use ASI handed over seal to SCT Gurtej Singh. Thereafter ASI took above said parcels along with sample seal vide memos in to police possession. Recovery memo was prepared separately. Further personal search of above Makhan Singh @ Gullu was conducted and nothing was recoved from him personal search memo was prepared separately. As such, Makhan Singh @ Gullu have committed an offence under Section 15C/61/85 of NDPS Act by keeping poppy husk in his possession. As such, this ruqa is being sent to Police Station Sadar Rampura through PHG Resham Singh for registration of case against above said Makhan Singh @ Gullu. After registration of case, higher officers and control room be informed. ASI, SI along with official, busy in investigation at the spot. Sd/- Pardeep Kumar ASI Sadar Rampura, Bathinda dated 24.08.2024. "

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. He further submits that allegedly, 600 grams of poppy husk was recovered from the petitioner which is small quantity. The petitioner has undergone an actual custody of 03 months and 22 days.

4. *Per contra*, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. He submits that the petitioner is a habitual offender and there are two other criminal cases under the NDPS Act registered against him, however, in those cases, he is

2024:PHHC:169915



and out of 10 total prosecution witnesses, none has been examined. He however, submits that in view of serious allegations against the petitioner, he is not entitled to the concession of regular bail.

5. Heard the rival submissions made by learned counsel for the parties.

6. The veracity of the allegations leveled against the petitioner shall be established during the course of the trial. Admittedly, the petitioner has undergone an actual custody of 03 months and 22 days and there are two other criminal cases under the NDPS Act registered against him, however, in those cases, he is on bail. Allegedly, 600 grams of poppy husk was recovered from the petitioner which is small quantity. Charges were framed on 09.12.2024 and out of 10 total prosecution witnesses, none has been examined. Therefore, further incarceration of the petitioner will not serve any purpose and will be violation of Article 21 of the Constitution of India including the right to speedy trial, and is against the principle “Bail is a rule, jail is an exception” as elucidated in the judgment of Apex Court in **“Dataram Singh vs. State of Uttar Pradesh and another, (2018) 3 SCC 22”.**

7. As regards the submission of learned State counsel that petitioner is involved in other criminal case(s), reference is placed upon the judgment of the Hon’ble Supreme Court in **Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 2012 (2) SCC 382** in which, it is held that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected

2024:PHHC:169915



solely on the ground that the petitioner is involved in other/another case(s).

The relevant portion of the said judgment is reproduced herein-below:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

8. Without commenting on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing adequate bail/surety bonds to the satisfaction of the concerned learned trial Court/Duty Magistrate. The petitioner shall also abide by the following conditions:-

- (I) The petitioner will not tamper with the evidence during the trial.
- (II) The petitioner will not pressurize/intimidate the prosecution witness(s).
- (III) The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- (IV) The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which he is suspected.
- (V) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

2024:PHHC:169915



9. In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.
10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

18.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No