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

**CRM-M No.11558 of 2025
Date of decision : 21.05.2025**

Fakir Chand @ Soni

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Parminder Singh Sekhon, Advocate and
Mr. Rajdeep Singh Gill, Advocate
for the petitioner.

Mr. J. S. Arora, DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present second petition has been filed praying for the grant of regular bail to the petitioner in case bearing FIR No.211, dated 22.11.2023, under Section 15 of NDPS Act, 1985, registered at Police Station Sadar Samana, District Patiala.

2. Succinctly the facts of the case are that the police party while on patrolling on 22.11.2023, received a secret information to the effect that Rajinder Kumar @ Rinku and Fakir Chand @ Soni (petitioner) were having truck bearing registration No.PB-11-CY-1830 and they were habitual of selling Poppy Husk on higher price after bringing the same from MP side. It was informed that they were coming with the heavy



quantity of Poppy Husk from MP side in their truck and in case of barricading, they could be arrested along with the contraband. On receiving the secret information reliable, the raiding team was constituted and barricading was laid at the disclosed place. The truck as disclosed in the secret information was seen coming and the same was stopped. Driver of the truck, on asking, disclosed his name as Rajinder Kumar @ Rinku whereas the person sitting on the side, disclosed his name as Fakir Chand @ Soni (petitioner). They were suspected to be carrying some contraband in the truck and thus they were given the offer for search. On conducting the search, 15 bags of black colour were recovered from the truck, each weighing 30 Kg. On examining the same, the bags were found to be containing Poppy Husk and thus a total of 450 Kg of Poppy Husk was recovered from all 30 bags. Both the persons failed to produce any licence regarding the conscious possession of the same and thus, the FIR was registered and both were arrested on the spot. On registration of the FIR, the investigation commenced. The samples taken were sent to the FSL. On completion of investigation, the challan was presented. The petitioner approached the Court of learned Judge, Special Court, Patiala praying for the grant of bail. However, after hearing both the sides finding no merit in the same, the learned Judge, Special Court, Patiala declined the petition filed by the petitioner vide order dated 13.05.2024. The petitioner earlier approached this Court by way of filing CRM-M-42366-2024 praying for the grant of bail, however the same was dismissed as withdrawn vide order dated 18.11.2024. Hence being aggrieved, the petitioner is before this Court by way of filing the present second petition praying for the



grant of regular bail.

3. Learned counsel for the petitioner has vehemently contended that FIR in the present case was registered on the basis of secret information but there is a violation of provisions of Section 42 of NDPS Act. He has submitted that the petitioner was a cleaner in the truck, who has been falsely implicated in the present case. He has submitted that there is a violation of provisions of Section 50 of NDPS Act as well. He has submitted that no independent witness has been examined at the time of search. He has submitted that the petitioner has no criminal antecedents and he is behind bars since the date of his arrest, i.e. 22.11.2023 but the trial is not concluded till date. He has submitted that in the facts and circumstances, the petitioner deserves to be granted bail.

4. *Per contra*, learned counsel for the State however has opposed the submissions made by counsel for the petitioner. He, on instructions, has submitted that the petitioner was specifically named in the FIR. He has submitted that on conducting the search of the truck, 450 Kg of Poppy Husk has been recovered, which is commercial in nature and thus, the provisions of Section 37 NDPS Act are attracted. He, on instructions, has submitted that there are total 24 prosecution witnesses and 15 remain to be examined. He has produced custody certificate of the petitioner today in the Court and the same is taken on record.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is inferred that FIR in the present case has been registered on the basis of secret information. The petitioner was allegedly a cleaner of the



truck. The petitioner was arrested on 22.11.2023 and since then, he is behind bars. Custody certificate shows that the petitioner has suffered incarceration of 01 year, 05 months and 24 days as on 20.05.2025. It further reveals that the petitioner has no criminal antecedents. As submitted before this Court, 15 witnesses still remain to be examined.

7. After perusal of the order passed by the Hon'ble Supreme Court in Mohd Muslim @ Hussain vs. State (NCT of Delhi), 2023 Live Law (SC)260, this Court is of the opinion that the case of the petitioner is covered by the ratio of law 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.*

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21 *.....it 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.*

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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.’

8. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court.

9. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides and perusing the record, the Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for the grant of 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.

(RAJESH BHARDWAJ)
JUDGE

21.05.2025

<i>rittu</i>	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No