



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

CRM-M-14100-2025

Date of Decision: 20.03.2025

Sushil @ Kalu

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. B.S. Mamli, Advocate, for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present third petition praying for granting regular bail in case FIR No.493 dated 17.12.2020 under Sections 15(b), 27-A/61/85 NDPS Act, 1985, registered at Police Station Sadar Fatehabad, District Fatehabad.

2. Succinctly, facts of the case are that on 17.12.2020 the Police party while on checking the vehicles saw a car bearing registration No.HR 26 BF 5662. On seeing the police, the driver of the car tried to reverse the same, however, the car was surrounded by the police party. Two persons were found sitting inside the car, who were apprehended. On asking, they disclosed their names as Sunil @ Kamal and Sushil @ Kalu (petitioner). A bag was found lying in the rear seat of the car. On suspicion, they were given offer for their search and that of the car. On conducting search, 42.2 kgs of poppyhusk was recovered from the bag lying in the car. Both the inmates failed to produce licence regarding possession of the same. Thus, the FIR was registered and they were arrested on the spot. Samples taken were sent to the FSL. On registration of the FIR, the investigation



commenced. Challan was presented and on framing of charges, the trial commenced. The petitioner approached the Court of learned Additional Sessions Judge, Fatehabad praying for grant of regular bail. However, after hearing both the sides, the learned Court finding no merit in the same, dismissed the bail application filed by the petitioner vide order dated 12.10.2022. Thereafter, the petitioner approached this Court twice by way of filing CRM-M-13151-2021, which was dismissed on merits vide order dated 17.08.2022 and CRM-M-9600-2023, which was allowed to be dismissed on withdrawn vide order dated 09.05.2023. Hence, the petitioner has again approached this Court praying for grant of bail by way of filing the present third petition.

3. It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely and frivolously implicated in the present case. He submits that the car from which the alleged recovery was effected does not belong to the petitioner. He submits that even otherwise, the petitioner was alleged found to be travelling in the car and no recovery was effected from him. He submits that alleged recovery was effected from the bag lying on the rear seat of the car in which 42.2 kgs of poppyhusk was recovered, which is a non-commercial quantity, hence, the provisions of Section 37 of the NDPS Act are not attracted. He submits that the petitioner is behind bars in the present case since the date of his arrest, thus, he has completed incarceration of more than 4 years. He submits that the petitioner is involved in other cases also, however, he is on bail in one of them. He, thus, submits that keeping in view the custody of the petitioner



specially when the contraband recovered is of non-commercial in nature, the petitioner deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the car from which recovery was effected belongs to the petitioner. He submits that however, recovered effected from the car is non-commercial in nature. He submits that after the petitioner was arrested in the present case, he was convicted in another case and hence, his custody after conviction is being counted in that case and not in the present case. He has placed on record the custody certificate of the petitioner. On instructions, he has submitted that out of total 16 prosecution witnesses, 06 witnesses have been examined.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the alleged recovery effected in the present case is of 42.2 kgs poppyhusk, which is of non-commercial quantity. Though the petitioner is behind bars from the date of his arrest, however, his custody in the present case could not be counted due to his conviction in another case. But still his custody as per the custody certificate in the present case is 02 years 04 months and 19 days.

6. 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. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficient long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular



bail to the petitioner.

7. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing his bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

8. It is being clarified that in case the petitioner does not furnish bail/surety bonds within a period of one week from today, his custody will not be counted in the present case after one week.

9. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

20.03.2025

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Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No