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

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CRM-M-52371-2024 (O&M)
Date of decision: 27.01.2025

Harmander Singh @ Fiddu**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

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

Ms. Sakshi Bakshi, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 439 of Cr.P.C., is for grant of regular bail to the petitioner in FIR No. 26 dated 23.03.2024, registered under Sections 15, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station Bhadaur, District Barnala.

2. Brief facts of the case relevant for the disposal of the present petition are that on 23.03.2024, a secret information was received by Inspector Tek Chand to the effect that co-accused Dharam Singh, whose house is in village Chhanna, his nephew Arshdeep Singh @ Arshu, his friend Harpreet Singh @ Haria and petitioner Harmandar Singh @ Fiddu keep poppy husk scrap and sell poppy husk scrap from the said house. Believing the information to be true, a raid was conducted at the house of co-accused Dharam Singh at about 10:35 AM and co-accused Arshdeep

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Singh, Harpreet Singh and petitioner Harmandar Singh were apprehended at the spot. During checking of the house, two bags containing poppy husk were recovered. On weighing the same, each of them was found to be containing 20 Kgs. of poppy husk. The same was taken into possession while following the proper procedure. The aforesaid co-accused including the petitioner were formally arrested at the spot. During investigation, co-accused Harpreet Singh @ Haria disclosed that he had brought poppy husk along with his friends Arshdeep Singh and petitioner Harmandar Singh. He also stated that he had brought another sack of poppy husk, which was hidden in the trunk of the car bearing registration number PB-29-X-2888. Thereafter, in pursuance of the disclosure of co-accused Harpreet Singh, 60 kgs. of poppy husk was recovered from the said car. After completion of necessary investigation and usual formalities, *challan* was presented in the Court and presently, the petitioner along with the co-accused is facing trial for commission of aforesaid mentioned offences. He had moved an application before the trial Court for grant of regular bail but the same had been dismissed, vide order dated 04.09.2024.

3. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. As per own version of the prosecution, only 40 kgs. of poppy husk was recovered from the petitioner and co-accused and 60 kgs. of poppy husk was recovered subsequently from the trunk of the said car in pursuance of disclosure made by co-accused Harpreet Singh and the same cannot be connected with the present petitioner. More so, in view of the ratio of law as laid down by Hon'ble Supreme Court in ***Amarsingh Ramjibhai Barot vs. State of Gujarat : 2005(7) SCC 550***, the recovery

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effected from the aforesaid co-accused cannot be added to bring it within the ambit of commercial quantity. Even otherwise, mandatory provisions of Sections 42 and 50 of the NDPS Act were not properly complied with. No independent witness was joined by the police party. There is nothing on record to connect the petitioner with the subject crime. Investigation has since been completed and *challan* has been presented. Conclusion of trial is likely to take time. The petitioner is in judicial custody since 23.03.2024. No useful purpose would be served by keeping him in custody anymore. Co-accused Amritpal Singh @ Landa has already been granted concession of regular bail by this Court, vide order dated 01.10.2024 passed in **CRM-M-39811-2024**. On the grounds of parity, the petitioner too deserves to be granted the same benefit. Therefore, it is urged that the petition deserves to be allowed and the petitioner deserves to be released on regular bail.

4. Status report has been filed by the respondent-State. It is submitted therein and learned Assistant Advocate General, Punjab has argued that the petitioner is not entitled to get benefit of bail as he was nabbed at the spot along with two other co-accused and recovery of 40 kgs. of poppy husk was effected. His story regarding false implication is concocted one. On the disclosure suffered by co-accused Harpreet Singh, subsequent recovery of 60 kgs. of poppy husk was effected from the trunk of the said car. The criminal antecedents of the petitioner are not clean as he is involved in three more criminal cases. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable

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length and have also perused the material placed on record.

6. As per the allegations, the petitioner along with aforesaid co-accused was involved in the sale/purchase of poppy husk. When the raid was conducted at the house of co-accused Dharma Singh, the petitioner along with co-accused were apprehended at the spot but co-accused Dharam Singh succeeded in running away, who is still absconding. At first instance, 40 kgs. of poppy husk was recovered and it was on the disclosure of co-accused Harpreet Singh that another recovery of 60 kgs. of poppy husk was effected from the aforesaid car. The quantity of the contraband recovered at the first instance obviously does not fall under the commercial quantity. Hence, in view of ratio of law as laid down in *Amarsingh's* case (supra), it will be a question of debate as to whether the recovery effected from the co-accused can be taken into consideration against the present petitioner to bring it within the ambit of commercial quantity and the same can be decided by the learned trial Court at the final conclusion of trial after appreciating the entire material and evidence placed on record before it. Though the petitioner is shown to be involved in some other criminal cases but none of them is under the NDPS Act. The petitioner is in custody since 23.03.2024. The trial is likely to take time. Keeping in view the discussion as made above, I am of the considered opinion that no useful purpose would be served by keeping him in custody anymore. Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing personal/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned. However, it will be open for the prosecution to apply for cancellation of bail in case the petitioner is found

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involved in any other subsequent case.

7. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

27.01.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No