

(2005) 03 P&H CK 0148

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 44830-M of 2004

Balbir Singh alias Bira

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 3, 2005

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 37

Citation: (2005) 13 CriminalCC 850

Hon'ble Judges: Virender Singh, J

Bench: Single Bench

Advocate: S.P.S. Sidhu, for the Appellant; G.S. Hooda, for the Respondent

Final Decision: Allowed

Judgement

Virender Singh, J.

Heard learned counsel for the parties. Relevant record also perused.

2. Debatable in this case is as to whether the recovery of 36 kgs of poppy husk from the petitioner pursuant to the disclosure statement made by him on 3.8.2004 would be added to the earlier recovery of 38 kgs of poppy husk allegedly shown to have been recovered from the petitioner on 17.7.2004. Mr.Sidhu, while strengthening his arguments states that if the aforesaid two recoveries are segregated in this case, then in that eventuality each recovery would fall under the head "non-commercial quantity" and the petitioner, thus, would be entitled to the concession of bail as provisions of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985, would not stand in his way. On the basis of the aforesaid submissions, Mr.Sidhu prays for bail.

3. Learned State counsel, however, opposed the bail application vehemently and states that both the recoveries are to be counted in the present case itself, which comes to 74 kgs of poppy husk and the same being commercial quantity, does not give the right of bail to the petitioner on account of the embargo contained in

Section 37 of the Act.

4. I find force in the submissions made by Mr.Sidhu. I am also conscious of the embargo contained in Section 37 of the Act but keeping in view the peculiar facts of the case in which there is a gap of one month in both the recoveries, the contention raised by Mr.Sidhu as to whether it would really fall under the head "non-commercial quantity" becomes a point for consideration, which at least entitles the petitioner for the relief of regular bail.

5. I refrain myself from commenting on the merits of the case at this stage, least it may prejudice the case of either side of at the relevant stage before the Trial Court but order the release of the petitioner on bail.

6. Consequently, the present petition is allowed. Petitioner is ordered to be released on bail on his furnishing adequate surety bond to the satisfaction of CJM/Duty Magistrate, Kapurthala.