
(2018) 05 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous (M) No.42522, 48336 Of 2017, 13557 Of 2018

Surinder Singh @ Chinda

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 2(xv), 2(xviii), 15, 61, 85

Citation : (2018) 05 P&H CK 0032

Hon'ble Judges : ARVIND SINGH SANGWAN, J

Bench : Single Bench

Advocate : Manuj Nagrath, Gitish Bhardwaj, Abhay Pal Singh Gill

Final Decision : Allowed

Judgement

Prayer in this petition is for grant of regular bail in FIR No.25 dated 23.04.2017 under Sections 15/61/85 of NDPS Act, registered at Police Station

Ganaur, District Patiala.

Learned counsel for the petitioner Surinder Singh @ Chinda submits that as per allegations in the FIR, the police party had set up a barrier and

stopped a car, which was driven by a Sikh person and two clean shaved persons were sitting on the front seat and back seat. On disclosure, the driver

told his name as Surinder Singh @ Chinda and two other co-passengers disclosed their names as Harbhajan Singh @ Bhajna and Gurmail Singh @

Goli. On suspicion, a notice was given for being searched before the Magistrate or a Gazetted Officer and all the three persons reposed faith in ASI

Baljeet Singh and thereafter, on conducting the search, a plastic bag kept between the seat cover of the back seat, was found containing black seeds

of poppy husk were found, which on weighing was found to be 84 kg.

Learned counsel for the petitioner further submits that the sealed sample parcels of black coloured poppy husk seed were sent for chemical

examination and as per report of the FSL, in the column of sample, it is mentioned as "brownish black coloured dried small round shaped seeds of

plant" and in the column of report, it is stated that mennonice acid is found, in the sample parcels. It is further submitted that the petitioner Surinder

Singh @ Chinda is in judicial lockup for more than 01 year and decision of the trial will take long time.

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in Ajaib Singh Vs. State of Punjab, 2000 (2) RCR (Crl.)

633 to submit that as per definition of opium, as per Section 2(xv) and 2 (xviii), the seeds are excluded from the definition of poppy straw, which is part

of opium poppy being a plant of the species *Papaver somniferum* L. Counsel for the petitioner has further relied upon judgment of the Himachal

Pradesh High Court in State of H.P. Vs. Sucha Singh and another, 2011 (9) RCR (Crl.) 92, in which it is held that except for seed, all other parts of

the plant species *Papaver somniferum* L would fall within the terms poppy straw and has upheld the judgment of acquittal holding that poppy seeds

are not covered in the definition of opium poppy or poppy straw.

Prayer in these petitions is for grant of regular bail to co-accused namely Harbhajan Singh and Gurmail Singh in the aforesaid FIR, on similar grounds.

It is submitted that petitioners Harbhajan Singh and Gurmail Singh have also undergone about one year of custody and they are not involved in any

other case, investigation is complete and conclusion of the trial will take long time.

Learned State counsel, on instructions from Dr. Ashu Talwar, Assistant Director, FSL, Mohali and the Investigating Officer, has however opposed the

prayer for bail to the petitioners on the ground that recovery of poppy seeds (khas-khas) is effected from the petitioners and as per FSL report, it

contains mennonic/morphine acid and therefore, it is a narcotic substance.

After hearing learned counsel for the parties, I find merit in these petitions.

A perusal of the FIR shows that alleged recovery was of poppy husk black seeds and the sample, which was sent to FSL also contained brownish

black coloured dried small round shaped seeds of plant, certified as poppy seeds (khas-khas) by the FSL, as per chemical examination report

(Annexure P-2) and therefore, it will be a debatable issue in the light of the judgments referred to above, whether the same fall in the definition of poppy husk or opium poppy and also in view of the fact that the petitioners are in judicial lockup for the last 01 year and conclusion of the trial will take some time, all these petitions are allowed and petitioners Surinder Singh @ Chinda, Harbhajan Singh and Gurmail Singh are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.