

# Law Today Live Doc. Id. 15173

**PUNJAB AND HARYANA HIGH COURT**

**Before: Jaishree Thakur, J.**

CRR No.1033 of 2020

Decided on: 28.07.2020

Chamkaur Singh @ Kori and another

Petitioners

Versus

State of Punjab

Respondent

*(Heard through VC)*

Present:

Mr. S.S. Gill, Advocate for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

**Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2), 439 -- Narcotic Drugs and Psychotropic Substances, Act, 1985 (61 of 1985), Section 15 -- 50 kg of Poppy husk weighed with bag -- Default bail -- Regular bail -- In case the poppy husk had been weighed separately from the bags wherein it was contained, it would not have come under the commercial quantity -- Challan ought to have been presented within a period of 60 days, considering the fact that the recovery was not of commercial quantity, which has not been done -- There is delay in the presentation of challan -- Bail allowed.**

**(Para 5-7)**

**Cases referred:**

1. Nirmal Singh @ Nimma Vs. State of Punjab, CRM-M No.34217 of 2017 decided on 12.10.2015.

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**JAISHREE THAKUR J. (ORAL) –**

1. This is a petition that has been filed under Section 439 read with Section 167(2) Cr.P.C. for grant of regular bail to the petitioner in FIR No.57 dated 11.05.2020 registered under Section 15 of NDPS Act at Police Station Bhadson, District Patiala.

2. Counsel for the petitioner herein submits that the Judge Special Court, Patiala has wrongly dismissed the application of the petitioners for grant of default bail under Section 167(2) Cr.P.C. It is argued that the petitioners were arrested on 11.05.2020 and the challan had to be presented within a period of 60 days, which had not been done. The application under Section 167(2) Cr.P.C. was dismissed on the ground that the petitioners were found in possession of 50 kgs of poppy husk including the weight of the bag containing the same. It is argued that recovery of 50 kgs of poppy husk does not fall under commercial quantity as specified by the notification issued by the Central Government. He further relies upon the judgment rendered by a Coordinate Bench of this Court in **CRM-M No.34217 of 2017 titled as 'Nirmal Singh @ Nimma Vs. State of Punjab' decided on 12.10.2015** wherein default bail had been allowed in similar circumstances on account of the fact that challan had

not been presented within the mandatory period of 60 days and the recovery was not of commercial quantity.

3. Learned counsel appearing for the respondent-State opposes the regular bail, who argues that no ground is made out for concession of regular bail.

4. I have heard learned counsel for the parties.

5. The only question for determination is whether default bail ought to have been allowed to the petitioner in terms of the judgment rendered in Nirmal Singh's case (supra) whereby this Court had gone into question of commercial quantity and held as under:-

*"From bare perusal of above said section, it is clear that the quantity, which is greater than the quantity mentioned in the Official Gazette, shall be termed as 'commercial quantity'. As per entry No.110 in the notification table, the quantity of 50 kgs. has been mentioned under the head of 'commercial quantity'. By implication of the above said section, it means that any quantity which is more than 50 kgs. of poppy husk will be treated as 'commercial quantity'."*

6. Coming to the facts of the present case, petitioners have been found to be in possession of 50 kgs. of poppy husk and admittedly, weight of the bag has not been excluded. In case the poppy husk had been weighed separately from the bags wherein it was contained, it would not have come under the commercial quantity. The challan ought to have been presented within a period of 60 days, considering the fact that the recovery was not of commercial quantity, which has not been done. There is delay in the presentation of challan.

7. Consequently, the instant petition is allowed and the petitioners are directed to be released on regular bail on execution of adequate personal/surety bond to the satisfaction of concerned trial Court/Duty Magistrate. However, any observation made herein shall not be construed to be an expression on merits of the case.

**Petition allowed.**

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