

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-41639-2015 (O&M)

Date of Decision: December 14, 2015

Rahisan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. D.S. Adhlakha, Advocate,
for Mr. Vikas Lochab, Advocate,
for the petitioner.

Mr. Pawan Gaur, DAG, Haryana,
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

NARESH KUMAR SANGHI, J (Oral)

CRM-40061-2015:

Criminal miscellaneous application for exemption is allowed in terms of the prayer made, subject to all just exceptions.

CRM-M-41639-2015:

Prayer in this petition, filed under Section 439, Cr.P.C., is for grant of bail to the petitioner, Rahisan, wife of Razzak, resident of Gali No. 1, Ward No. 31, Idgah Colony, Near Chhhotu Ram Chowk, Sonapat, who has been booked for having committed the offence punishable under Section 17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, 'the NDPS Act'), in a case arising out of FIR No. 581, dated 14.9.2015, registered at Police Station, City, Sonapat.

Learned counsel contends that as per prosecution case, six kilograms and seven-hundred grams of *Ganja Patti* (leaves) were recovered from the petitioner on 14.9.2015 and since then she is behind the bars; the bar of Section 37 of the NDPS Act would not apply in the present case since the recovery was less than twenty kilograms of *Ganja*; and that even if the whole case of the prosecution is taken at its face value, then also Section 17 of the NDPS would not apply as per the definition of '*ganja*', enshrined in Section 2(iii)(b) of the NDPS Act. To elaborate his arguments, learned counsel contends that only flowering or fruiting tops of the cannabis plant come within the definition of '*ganja*' and not the seeds and leaves. He further

submits that the investigating officer, who effected the alleged recovery of *ganja patti* from the petitioner, has failed to describe the contents of the said material. He also points out that the petitioner is neither required no involved in any other case. In support of his contention, learned counsel has placed reliance on a judgment passed by this Court in the case of **Sudhir v. State of Haryana, 2008 (4) R.C.R. (Criminal) 385.**

Learned counsel for the State has not controverted the factual and legal aspects raised by learned counsel for the petitioner. However, he has opposed the contention that the recovery effected from the petitioner would not attract the provisions of Section 17 of the NDPS Act.

After hearing learned counsel for the parties and going through the material available on record, there is no dispute that the recovery alleged to have been effected from the petitioner would not lead this Court to conclude that the bar enshrined under Section 37 of the NDPS Act is applicable in the present case. It is also an admitted position that at best the maximum sentence that could be awarded to the petitioner is ten years besides payment of fine. The petitioner is neither required nor involved in any other case.

As a sequel to the above, the present petition is accepted. The petitioner, Rahisan, wife of Razzak, resident of Gali No. 1, Ward No. 31, Idgah Colony, Near Chhhotu Ram Chowk, Sonapat, is ordered to be released on bail during pendency of the trial subject to her furnishing bail bonds to the satisfaction of learned Judge, Chief Judicial Magistrate/Duty Magistrate, Sonapat.

(NARESH KUMAR SANGHI)
JUDGE

December 14, 2015
Pkapoor