

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

Date of decision : October 05, 2016

1. CRM-M No.15417 of 2015
2. CRR No.2200 of 2015

Gurcharan Singh vs State of Haryana

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Ms. Loveleen Dhaliwal, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Addl. AG Haryana

Ajay Tewari, J (Oral)

This order shall dispose of the aforesaid two petitions as they arise from the same FIR. In CRM-M No.15417 of 2015, prayer has been made to grant regular bail in case FIR No.43, dated 19.3.2015 registered under Sections 18/25-A/61/85 of the NDPS Act, at Police Station Guhla, District Kaithal. In CRR No.2200 of 2015, prayer has been made for quashing of the order framing charge against the petitioner.

As per allegations, secret information was received that the petitioner was cultivating opium plants on his land. A raid was conducted and the opium plants were uprooted, a total of which was 12 kgs.

Counsel for the petitioner has argued that the petitioner has been in custody for about four months. Bail application of the petitioner has been rejected by the trial Court holding that the quantity recovered is commercial quantity. As per the learned counsel, this is a complete mis-interpretation of the NDPS Act (for short “the Act”). Section 18 of the Act deals with offences related to opium and opium poppy. The same is quoted as below :-

“18. Punishment for contravention in relation to opium poppy and opium. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable :-

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.”

Counsel for the petitioner has argued that there is no measure of small quantity or commercial quantity for opium poppy because it is in fact a growing plant and would be so even at the stage of germination and till the stage of harvesting. Consequently, an offence for cultivating opium poppy would only be covered by Section 18-C of the Act. In the Table annexed with the Act it is clarified that with respect to cultivation of opium poppy the expression 'small quantity' and 'commercial quantity' is not relevant and the offence is to be covered under Section 18-C of the Act and, therefore, recovery of any quantity of opium poppy would have to be covered under non commercial quantity.

I find this to be so. I, however, find that very interestingly there is similar provision with regard to cannabis plant and cannabis viz Section 20 of the Act, which is quoted as below :-

“ 20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,
(a) cultivates any cannabis plant; or
(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable; (i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may

extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b), (A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

In respect of cannabis plant no separate provision has been made in the notification. However, on drawing an analogy with the provision relating to opium poppy, it would have to be held that for the seizure of cannabis plant also, the quantity would fall within non-commercial quantity despite the fact that there is no provision therefor in the Schedule.

Coming back to the present case, in my opinion, once it is held that recovery of opium poppy has to necessarily fall within the ambit of non-commercial quantity, bar of Section 37 of the Act would not apply and keeping in view the recovery (12 kgs) and the period of custody undergone by the petitioner, I do not deem it appropriate to deny

the concession of regular bail to the petitioner. Bail to the satisfaction of the trial Court/Duty Magistrate. CRM-M No.15417 of 2015 stands disposed of.

As regards CRR No.2200 of 2015, the fact that charge has been framed under Section 18 and not specifically under Section 18-C of the Act would not call for interference since a person who is charged with a more serious offence can always be found guilty of a lesser offence. In view of the clarification in the order granting bail to the petitioner, counsel for the petitioner states that she does not press this petition and the same be dismissed as such.

Ordered accordingly.

October 05, 2016
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No