

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

CRM-M No.43302 of 2016.

Date of Decision: 08.12.2016.

Isham Singh

....Petitioner.

VERSUS

State of Haryana

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Aman Pal, Advocate for the petitioner.

Mr. Karan Sharma, Assistant Advocate General, Haryana.

SNEH PRASHAR, J.

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of concession of regular bail to the petitioner in case First Information Report No.386 dated 07.05.2016 under Section 20-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act of 1985") registered at Police Station City Thanesar, District Kurukshetra.

As per the accusations in the First Information Report, on 07.05.2016 when ASI Raj Kumar alongwith his official companions was present in Kirti Nagar, he received a secret information against the petitioner and after some time of his sending the information in writing to D.S.P. City, he intercepted vehicle No.HR-07V-1801 coming towards

as Isham Singh son of Jaipal (petitioner). Expressing suspicion that there was narcotic substance in the vehicle, notice under Section 50 of the Act of 1985 was served upon him in the presence of witnesses. D.S.P. City, Thanesar was informed and was asked to come at the spot. On his reaching the spot, the D.S.P. enquired the matter from Isham Singh and signed the notice under Section 50 of the Act of 1985 and in pursuance of the same asked the ASI to take search of Isham Singh and the vehicle. A plastic bag found on the front seat and another plastic bag lying on the back seat were opened and it was found that both the bags contained Ganja. On weighing, the contraband came out to be 49 Kgs 500 grams. Two samples of 250 grams each were taken from each of the bags and the residue was repacked in the bags. The sample and the residues were converted into sealed parcel and the petitioner was arrested.

The application for regular bail filed by the petitioner was dismissed by learned trial Court.

The submissions made by Mr. Aman Pal, learned counsel representing the petitioner and Mr. Karan Sharma, learned Assistant Advocate General, Haryana have been heard.

Besides arguing that the alleged contraband was not recovered from the petitioner and the story presented by the prosecution is false, learned counsel for the petitioner referred to the report given by the Forensic Science Laboratory on chemical analysis of the samples of the contraband sent to them and submitted that the report raises a strong doubt with regard to the quantity of contraband alleged to be recovered from the petitioner. He submitted that as per the report, the material recovered was

processed. After drying and being processed, the same might have come down to much less than what was being alleged and may even fall in non commercial quantity.

Indeed, the report of the Forensic Science Laboratory pertaining to the contraband recovered from the bags lying in the car driven by the petitioner had been described as under:-

“N-422/16 (1 & 2) - *Greenish brown vegetative material having Flowering/fruited tops and Seeds etc.(1&2)*”

Apparently, as per the report, the contents of the sample contained the seeds as well as the leaves of cannabis plant as was indicated by the colour of the contents of the samples and the ingredients of the same. It becomes relevant to refer to Section 2(iii)(b) of the Act of 1985 which lays down the definition of Ganja. It reads as under:-

“(iii) “*cannabis (hemp)*” means-

(a) *x x x x*

(b) *ganja, that is, the flowering of fruited tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever, name they may be known or designated.”*

In order to attract the provisions of Section 20 of the Act of 1985, Ganja would be, the flowering of fruited tops of cannabis plant excluding the seeds and leaves when not accompanied by tops. In the instant case, from the report of the Forensic Science Laboratory, it is clear that the contents of the bags in addition to flowering of fruited tops contained seeds and leaves of the cannabis plant which would prima facie lead to the

the weight determined by the investigating officer. The percentage of the tops and of the seeds in the sample was not determined.

In *Sudhir vs. State of Haryana, 2008(4) R.C.R. (Criminal)* 385 this Court noticed that as per para 1.6 of the notification of the instructions SO 390(E) issued while exercising powers under first proviso of Section 8 of the Act of 1985, the packages/ containers should be well mixed to make it homogenous and representative before the sample is drawn in case of opium, ganja and charas etc. A perusal of the First Information Report in the instant case reveals that it does not contain a recital that the said exercise of making the packages homogenous and representative was done before drawing the sample from the contents of the bags.

In the above premise, identification of the contents and the quantity of actual ganja falling within the definition of the Act of 1985 will be a debatable proposition. The petitioner is in custody for the last 06 months and 29 days. The trial is likely to take some time to complete. As such, least any expression above, may prejudice the case of either side, the petitioner is ordered to be released on regular bail during pendency of the trial on his furnishing bail/ surety bonds to the satisfaction of learned trial Court, subject to the condition that in case he is found to commit similar offence of which he is presently accused of during the pendency of the trial, the prosecution will be at liberty to seek the cancellation of bail.

(SNEH PRASHAR)
JUDGE

08.12.2016
jitender sharma

Whether speaking/ reasoned : Yes

Whether Reportable : Yes