

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

**Criminal Misc. No. M-266 of 2018
Date of decision: 13.07.2018**

Jangir Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Ms. Supriya Garg, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent -State.

Daya Chaudhary, J. (Oral)

Petitioner-Jangir Singh has filed the present petition under Section 439 Cr.P.C. for grant of regular bail to him in case FIR No.93 dated 14.09.2017 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station Budhlada, District Mansa.

Learned counsel for the petitioner submits that as per allegations levelled in the FIR, the petitioner was living the life of a *Nihang Singh* and was found to be in possession of Bhang contained in three bags. The total quantity of Bhang came to be 31 kg including the weight of three gunny bags. Learned counsel further submits that possession of leaves of Cannabis plants (Bhang) without top is not an offence under Section 20 of the NDPS Act. It does not fall within the definition of Cannabis (hemp) as defined under Section 2(iii) of the NDPS Act. The provisions of Section 20

of the Act are not applicable to the recovery effected from the petitioner. Learned counsel also submits that the alleged recovery may be in violation of Section 3(13) of the Punjab Excise Act, 1914, which is punishable under Section 61 of the Punjab Excise Act. Learned counsel also submits that the provisions of NDPS Act are not attracted in the present case as rigor of Section 37 of the Act does not apply. The petitioner was arrested in the case on 14.09.2017 and he has undergone custody of 10 months. No purpose would be served by keeping him in custody as all the witnesses are official witnesses and there is no possibility that he may influence the witnesses or tamper with the evidence. No other case of similar nature is pending against him. Learned counsel for the petitioner has relied upon judgment rendered by the Delhi High Court in ***Dilip vs. State, Bail Application No.2330 of 2008 decided on 02.07.2010*** wherein reference was decided by holding that neither the NDPS Act nor notification dated 18.11.2009 are applicable. The percentage of THC in a sample of *Charas* by itself cannot be determinative of the purity of the sample. A test resulting in the quantification of the percentage content of THC is neither relevant nor necessary for the purposes of considering the bail or while awarding sentence under the NDPS Act. Section 21 of the NDPS Act deals with 'psychotropic substances' and has nothing to do with the punishment in relation to cannabis (charas, ganja or a mixture thereof) and cannabis plants, which are specifically dealt with under Section 20 of the NDPS Act. Learned counsel for the petitioner has also relied upon judgments rendered by this Court in ***Gurdial Singh vs. State of Punjab, 2004(2) RCR (Criminal) 745, Arjun Singh vs. State of Haryana, 2004(4) RCR (Criminal) 506, Ajaib Singh vs.***

State of Punjab, Criminal Misc. No. M-23788 of 2015 decided on 11.01.2016, judgment rendered by the Orissa High Court in *Nirmal Chandra Sahoo vs. State of Orissa, 1996 CriLJ 1902*, judgments rendered by the Rajasthan High Court in *Manjee vs. State of Rajasthan, 1996(2) RCR (Criminal) 258, Sevaram vs. State of Rajasthan, 1993 CriLJ 2503* and judgment rendered by the Bombay High Court in *Madhukar vs. The State of Maharashtra, 2002 BomCR (Cri) 779* in support of her contentions.

Learned State counsel has not disputed the custody period as well as stage of trial and also the ratio of judgments as cited by learned counsel for the petitioner.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

The 'Cannabis plant' is defined under Section 2(iv) of the NDPS Act, which means any plant of genus cannabis. It is also relevant to mention here that Bhang cannabis plants are of two kinds known as male and female. A female cannabis plant is called *Pistillate* plants whereas male plants are identified by short Axillary Drooping Panicles. Female flowering tops quoted with resin are Ganja whereas fruiting leaves are called Bhang.

According to Modi's Medical Jurisprudence and Toxicology 21st Edition, 1988, Section II toxicology Chapter XXXIV page 248, 'Bhang', 'Siddhi' 'Patti' are cannabis Sativa consists of dried leaves and fruiting shoots whereas Ganja has rusty green colour and a characteristic colour and consists of flowering or fruiting tops of the female plant quoted with resin.

According to Modi's toxicology, Charas is concentrated resin excluding from the leaves and stems of the plant.

Undoubtedly, cultivation of 'Bhang' is punishable under the NDPS Act but it is not included within the definition of cannabis (hemp) and does not under Act No.2 of 1950 within the meaning of Article 254 of the Constitution of India. As far as cultivation of Bhang is concerned, the NDPS Act would prevail over Act No.2 of 1950 and latter enactment passed by the Legislature of State shall be deemed to be repugnant and void to the extent of its inconsistency to the former enactment passed by the Parliament. However, the personal use and sale of Bhang is not an offence.

Section 20(b)(i) of the NDPS Act provides that whosoever in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punished when the contravention relates to Ganja or cultivation of cannabis plant with RI for a term which may extend to five years. Section 20(b)(ii) provides that such contravention when it relates to cannabis other than ganja with RI for a term which shall not be less than 10 years. It is also relevant to mention here that cases falling under Section 20 (b)(ii) are treated to be serious offences as compared to one contained in Section 20(b)(i). Cannabis is defined in Section 2(iii) of the NDPS Act, which reads as under: -

“(iii) cannabis (hemp) means-

(a) charas, that is, separated resin, in whatever form, whether crude or purified; obtained from the cannabis

plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting 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; and

(c) any mixture, with or without any natural material, of any of the above forms of cannabis or any drink prepared therefrom.”

A perusal of the above definition of “Cannabis (hemp) would reveal that cannabis (hemp) means charas, ganja or any mixture of charas and ganja. So far as ganja is concerned, it is the flowering or fruiting 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. What is relevant to note is that the Legislature has consciously excluded the seeds and leaves of cannabis plant when not accompanied by the tops.

In the present case, it is not the case of the prosecution that the leaves which were seized from the petitioner were accompanied by the tops. I proceed on an admitted position that what is seized from the petitioner-accused are leaves of cannabis plant, viz. Bhang and the question that falls for consideration is as to whether the leaves of cannabis plant fall within the definition of cannabis (hemp). If the leaves of cannabis plant does not fall within the definition of cannabis (hemp), then the possession and/or sale thereof would not be regulated by the NDPS Act and as such there does not arise any question of the petitioner having committed offence under Section

20(b)(ii) of the NDPS Act.

It is apparent from the abovesaid definition that the Bhang is excluded from operation of NDPS Act. Therefore, it can safely be concluded that Bhang is not a narcotic and as such, prohibition engrafted in Section 8 of the NDPS Act cannot apply to possession or sell or purchase of Bhang.

Same controversy was there before the Division Bench of Calcutta High Court in *Sri Promodh Jha vs. State of West Bengal, 2008(2) AICLR 193* wherein the accused was released on bail.

Accordingly, keeping in view the law position as discussed above and the facts and circumstances as well as custody period, which is 10 months and the fact that all the witnesses are official witnesses and there is no possibility that the petitioner may influence them, the present petition is allowed and the petitioner (Jangir Singh) is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

13.07.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes