

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

**Criminal Misc. No. M-28246 of 2017 (O&M)
Date of decision: 30.08.2018**

Ramakant Sah

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Yashwant Singh Rathore, Advocate
for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana
for the respondent -State.

Daya Chaudhary, J.

Criminal Misc. No.30282 of 2018

This application has been moved for placing on record copy of
FIR as Annexure P-3.

Application is allowed and Annexure P-3 is taken on record.

Criminal Misc. No. M-28246 of 2017

The present petition has been filed under Section 439 Cr.P.C.
on behalf of petitioner-Ramakant Sah for grant of regular bail in case FIR
No.149 dated 26.03.2017 registered under Sections 20, 29/61/85 of the
Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station
Sadar Thanesar, District Kurukshetra.

Learned counsel for the petitioner submits that the name of
petitioner was not mentioned in the FIR and he has falsely been implicated
in the case at the instance of Police officials. Nothing was recovered from

the petitioner and false recovery has been shown to be planted upon him. No independent witness was joined, which makes the prosecution version doubtful. Learned counsel further submits that form No. M-29 was not filled at the spot by the Investigating Officer whereas it is mandatory as per provisions of NDPS Act. The provisions of Section 52-A of NDPS Act have also not been complied with as neither any photography nor videography of the contraband articles was done. Learned counsel also submits that the petitioner is in custody since 26.03.2017 and the trial may take long time to conclude and no purpose would be served by keeping him in custody. There is no apprehension that the petitioner may influence the witnesses or tamper with the evidence as all the witnesses are official witnesses. No other case is pending against the petitioner. Learned counsel also submits that in FIR No.124 dated 05.07.2017 registered under the NDPS Act recovery of 20 kg 800 gms of *Ganja* was effected from the accused who has approached this Court by way of filing Criminal Misc. No. M-40125 of 2017, which was allowed and the accused was directed to be released on regular bail by stating that *Ganja* upto 20 kg falls under non-commercial quantity. It was also mentioned that the total weight of the contraband including weight of bag was measured, which might be more than one kg.

Learned State counsel has not disputed the custody period as well as the alleged recovery.

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.

Admittedly, the recovery effected from the petitioner is 20 kgs

of *Ganja*. The petitioner was not arrested from the place of occurrence. The accused, who has approached this Court by way of filing Criminal Misc. No. M-40125 of 2017, has been released on regular bail vide order dated 01.11.2017 by stating that *Ganja* upto 20 kgs falls under non-commercial quantity and the total weight including the weight of bag was measured, which might be more than one kg. It is also relevant to mention here that no proper weighing scales were used for weighing the alleged recovery and the bags, which were allegedly containing the narcotic substance were not separated before knowing the actual weight. Even the Investigating Officer has not explained as to why polythene bag was weighed. The explanation has not been given for doing so.

In the present case also, the petitioner was not arrested at the time of recovery but arrested subsequently and the total quantity includes the weight of bag.

Accordingly, without expressing any opinion on the merits of the case and by considering the submissions made by learned counsel for the petitioner that recovery effected is 20 kgs of *Ganja*; and the fact that the petitioner is in custody since 26.03.2017, the present petition is allowed and the petitioner (Ramakant Sah) is directed to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court.

30.08.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No