

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

**Crl. Misc. No.M-36081 of 2018 (O&M)
Date of Decision: September 17, 2018**

Rajeev Chauhan

.....PETITIONER(s).

VERSUS

Union of India

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. F.S. Virk, Advocate
for the petitioner (s).

Mr. D.D. Sharma, Advocate
for UOI-Narcotic Control Bureau, Chandigarh.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case NCB Crime No.64/2017 dated 05.10.2017 (wrongly mentioned as FIR No. 68 dated 12.06.2018 in the impugned order dated 12.06.2018 passed by Additional Sessions Judge, Mohali) registered for the offences punishable under Sections 8, 18, 20 & 60 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station NCB Chandigarh.

Heard.

As per case of the prosecution, petitioner was apprehended on the basis of secret information on 05.10.2017 and 950 grams of opium was recovered from his possession. On further search, recovery of 1.8 Kg of *charas* was also effected from his possession.

Learned counsel for the petitioner while referring to the report of Forensic Science Laboratory has argued that as per report of FSL, contents of sample sent for examination cannot be termed as '*charas*'. In support of his contention, he has relied on the observations of Division Bench of this Court in case of ***Varinder Kumar Vs. State of Punjab (CRM-22440-2017 in CRA-D-163-DB-2017 decided on 28.05.2018)***, wherein it has been observed as follows:-

“Counsel for the applicant-appellant has referred to Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology as discussed in the judgment Nagender Shah Versus State of H.P. by a Division Bench of Himachal Pradesh High Court reported as 2010(4) R.C.R. (Criminal) 194, to clarify that in case of “Bhang”, Tetrahydrocannabinol in the sample stuff would be 15% and in the case of “Ganja,” it would be 25% and in case of “Charas”, it would be between 25 to 40%.

In view of the said submission and the percentage of the Tetrahydrocannabinol, other cannabinoids and cystolithic hair in the sample, we called for the report from the Forensic Science Laboratory, Punjab, and have also tried to seek clarification as to what was the percentage of Tetrahydrocannabinol in the sample in this case to arrive at a prima facie conclusion that it was actually “Charas” and not “Ganja” as the quantity of resin determined as 22.62% appears to be vague and uncertain to us as it was not clear whether the resin would be Tetrahydrocannabinol or any other chemical in the sample.

The affidavit submitted by the Assistant Director (Toxicology), Forensic Science Laboratory,

Punjab, indicates that in context to the definition of cannabis under Section 2(iii)(b) of the NDPS Act and in context to the Clarke's Isolation and Identification of Drugs under the heading "cannabis"; the observations in Modi's Medical Jurisprudence & Toxicology and the Recommended Methods of United Nations Office on Drugs Crime (UNODC) regarding identification and analysis of cannabis and cannabis products, the contraband in the present case has been described as "Charas". The operative part of the affidavit reads as under:-

"10. That the content of the THC is not the only parameter to define the type of cannabis product as the content of THC vary from sample to sample and also depends upon its storage condition. Various Analytical Techniques such as Physical Examination, Microscopic Characterization, Chemical Testing and Instrumental techniques are applied to identify the type of Cannabis product [as per Directorate of Forensic Science Services (DFSS) manual based on United Nations Office on Drugs and Crime (UNODC) manual]. On the basis of above mentioned Tests and Techniques the sample in this case has been identified as Charas with 22.62% resin extract (THC) in it. The sample of this case has been described as Charas as the same has been found fulfilling all the tests as mentioned above."

We have also heard the Assistant Director (Toxicology), Forensic Science Laboratory, Punjab, and considered the literature referred to by her in the Court and arrived at a prima facie conclusion that the

percentage of resin extract determined by the Laboratory is actually not giving the exact percentage of Tetrahydrocannabinol and other cannabinoids and is a rough estimate of the contents of cannabinoids in the resin extract. In Nagender Shah's case (supra), it has been observed that mere presence of cystolithic hair in fabric of cannabis plant do not mean that analysed stuff is "Charas" and not other product of cannabis."

Learned counsel appearing for Narcotic Control Bureau has argued that in the report of Forensic Science Laboratory, the contents of the sample taken from the contraband recovered from the petitioner were found to be that of *charas* and at this stage, it is sufficient to hold that it was of *charas*. As contraband recovered was of commercial quantity, as such petitioner is not entitled to be released on bail as per the bar of Section 37 NDPS Act.

It is correct that in the report of Forensic Science Laboratory, the contents of dark green coloured semisolid resinous material was declared to be *charas*. However, report mentions about chemical test of this sample as follows:-

- "1. Consistent characteristic microscopic features of cannabis were observed in exhibit.
2. Chemical test and chromatographic analysis also gave positive tests for canabinodis in exhibit."

It will be an arguable point as to whether on the basis of above report, the contents of the sample sent to the Forensic Science Laboratory could be termed as *charas*.

Keeping in view the above facts, but without expressing any opinion on merits of the case, the present petition is allowed. Petitioner

Rajeev Chauhan is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- c. He shall not leave the country without prior permission of the Court.

It is, however, made clear that nothing observed in this order shall be treated as an opinion on merits of any aspect of the case.

September 17, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***