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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1493/2018**

SUBODH

..... Petitioner

Represented by: Ms. Rakhi Dubey, Advocate.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Represented by: Ms. Rajni Gupta, APP for the
State with SI Yakub Khan, PS
Kapashera.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

27.09.2018

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1. By this petition, the petitioner seeks bail in case FIR No. 12/2018 under Section 20 of NDPS Act.

2. The above noted FIR was registered on the complaint of Sub-inspector Akash who while patrolling found the petitioner with a gunny bag. Since on questioning the petitioner did not give any satisfactory reply, search of the petitioner and the articles in the bag was taken. The bag contained smelly green leaves which appeared to be hemp. The total weight of the white gunny bag was found to be 3 kg from which two samples of 50-50 grams each were separated and put in plastic polythene and sealed with the help of rubber seal in a white cloth. The remnants were also sealed and deposited in the malkhana. On the sample being opened at the FSL they

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were found to contain “dried greenish brown coloured fruiting and flowering vegetative material, kept in a polythene and tied with rubber band stated to be Ganja, weight approximately 55.00 grams with polythene and rubber band”.

3. As per the opinion of the FSL expert on physical, Microscopic, Chemical & TLC examination, the exhibits were found to be Ganja (cannabis).

4. Learned counsel for the petitioner firstly contends that the recovery of the articles from the petitioner was fungus infected leaves without the flowering tops and hence it was not Ganja. When confronted with the FSL reports which note that fruiting and flowering vegetative material was recovered learned counsel for the petitioner submits that to determine the quantity/weight of the leaves and stems has to be excluded.

5. Section 2 (iii) (b) of the NDPS Act defines Ganja as under:-

(iii) “ Cannabis (hemp) ” means-

(a).....

(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.

6. Definition of ‘Ganja’ clearly shows that when the leaves and seeds are not accompanied by the tops it would not be cannabis, however, flowering and fruiting would be an integral parts of seeds and leaves and the entire product has to be taken as Ganja. Contention of the learned counsel for the petitioner that the flowering and fruiting tops can only be treated as Ganja is liable to be rejected in view of the definition of Ganja as noted in NDPS

Act.

7. However, the petitioner is not involved in any other case, the recovery of 3 kgs is less than commercial quantity, the petitioner has been in custody since 6th January, 2018 and till date only one prosecution witness has been examined out of eleven witnesses to be examined. On a query put, learned APP for the State on instruction from the Investigating officer clarifies that though the rest of the family of the petitioner is residing at the native place in Bihar, however, the parents of the petitioner are residing at Jhuggi No. 509, Sonia Gandhi Camp, Samalka, PS Kapashera, Delhi.

8. Considering the facts noted above, this Court deems it fit to grant bail to the petitioner. It is, therefore, directed that the petitioner be released on bail on his furnishing a personal bond in the sum of ₹25,000/- with two surety bonds of the like amount, subject to the satisfaction of the learned Trial Court, further subject to the condition that the petitioner will not leave NCT of Delhi without prior permission of the Court concerned and in case of change of residential address the same will be intimated to the Court concerned by way of an affidavit.

9. Petition is disposed of.

10. Order dasti.

MUKTA GUPTA, J.

SEPTEMBER 27, 2018
‘yo’