

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

**Criminal Misc. No. M-45029 of 2018
Date of decision: 31.01.2019**

Roshan Kumar and another

..Petitioners

Versus

The State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. B.S. Saroha, Advocate
for the petitioners.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana
for the respondent -State.

Daya Chaudhary, J. (Oral)

Petitioners Roshan Kumar and Lalit @ Lalli have approached this Court by way of filing the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to them in case FIR No.471 dated 07.09.2017 under Sections 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – 'NDPS Act') registered at Police Station Thanesar Sadar, Distt. Kurukshetra.

Learned counsel for the petitioners submits that the petitioners have falsely been implicated in the case, whereas they were not involved. The challan has been presented and, thereafter, charges have also been framed. As per the chemical examiner report, the description of the alleged contraband on the basis of physical appearance has been shown to be greenish brown vegetative material having flowering/fruited top and seeds (1 and 2). As per the chemical examiner report, it was found to be of ganja. Learned counsel also submits that as per Section 2(iii) (b) of the NDPS Act it does not cover under the definition of ganja as ganja is having only the flowering and fruitful tops excluding the seeds and leaves. The FIR was

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registered on the basis of secret information. As per the story of the prosecution, petitioner No.1 along with co-accused Vishavjeet was sitting on one bag from which total 45 kilograms of ganja was recovered whereas 35 kilograms ganja was recovered from petitioner No.2. Co-accused Lalit alias Lalli was also apprehended with 35 kilograms ganja from the other bag. Learned counsel also submits that it is not possible to keep 45 and 35 kilograms ganja in a bag. Four persons have been shown to be arrested by the police as two persons were sitting on each bag. Learned counsel further submits that the petitioners are in custody since 07.09.2017 and no recovery was effected from them. Learned counsel also submits that there is non-compliance of mandatory provisions of the NDPS Act and the Rules. Learned counsel further submits that the case of the petitioners is partly covered by judgment of this Court in case titled as ***Jangir Singh Vs. State of Punjab, CRM-M No.266 of 2018*** decided on 13.07.2018.

Learned State counsel has not disputed the period of custody undergone by the petitioners and also the ratio of judgment as cited by learned counsel for the petitioners.

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

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

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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

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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 by the police from the petitioners were accompanied by the tops. The question for consideration by this Court is as to whether the leaves of cannabis plant fall within the definition of cannabis (hemp). If the leaves of cannabis plant do not fall within the definition of cannabis (hemp) then the possession thereof and sale are not regulated by the NDPS Act and it cannot be said that the petitioners are involved in commission of offence under NDPS Act. As per the ratio of law laid down in *Jangir Singh's* case (supra), the recovery effected from the petitioners does not attract provisions of NDPS Act. Same controversy was there before the Division Bench of Calcutta High Court in case *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 in the facts and circumstances of the case as well as by considering the period of custody undergone by the petitioners and also the fact that all witnesses are official witnesses and there is no possibility that the petitioners may influence them or tamper with the evidence, the present petition is allowed and petitioners, namely, Roshan Kumar and Lalit @ Lalli are directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court.

31.01.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes