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

**CRM-M No.3330 of 2020
Date of Decision: 03.03.2020**

SUNILPetitioner
Vs
STATE OF HARYANARespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Dr. Deipa Singh, Advocate
for the petitioner.

Mr. Anmol Malik, A.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.256 dated 30.09.2019, registered under Sections 20 and 61 of the NDPS Act at Police Station Hasanpur District Palwal.

[2]. As per allegations, 23 bags of Ganja weighing 493 kgs. 830 grams of Ganja is alleged to have been recovered from a plot not proved to be owned by the petitioner. The alleged recovery is claimed to be commercial in nature.

[3]. Learned counsel for the petitioner submitted that Cannabis plant and Cannabis (Hemp) are two distinct contrabands under the NDPS Act (for short 'the Act'). Cannabis (Hemp) is defined under Section 2(iii) of the Act which includes Charas and Ganja and also any mixture with or without any

natural material of any of the above forms of Cannabis or any drink prepared therefrom.

[4]. Charas is defined under Section 2(iii)(a) of the Act which means separated resin, in whatever form, whether crude or purified form obtained from the Cannabis plant. Ganja is defined under Section 2(iii)(b) of the Act which is flowering or fruiting tops of the Cannabis plant (excluding seeds and leaves). Cannabis plant is defined under Section 2(iv) of the Act which means any plant of genus Cannabis.

[5]. From the aforesaid, it can be seen that the Charas which is popularly known as Hashish is a separated resin obtained from Cannabis plant (Hemp) either from natural discharge of resin through its pores or by means of incisions by human intervention. Therefore, Charas is not a Cannabis plant, but it is resin obtained from it, whereas Ganja is the flowering or fruiting tops of the Cannabis plant excluding the seeds and leaves.

[6]. On the basis of aforesaid proposition, learned counsel seeks to distinguish the contraband Ganja from Charas on the strength of **Manjee Vs. State of Rajashtan, 1996(2) RCR (Criminal) 258** and **Arjun Singh Vs. State of Haryana, 2004(4) RCR (Criminal) 506.**

[7]. Per contra, learned State counsel on instructions from

HC Mahesh Kumar submitted that the petitioner was arrested when he was found present at the spot. Challan has been presented, but FSL report is still awaited. Evidently, there is no other case against the petitioner. Co-accused i.e. supplier Dinesh has also been granted regular bail by the Court of Sessions.

[8]. In view of above, it would be debatable as to whether the Ganja can be treated at par with charas under Section 20 of the NDPS Act. Reference can be placed on CRM-M No.11862 of 2017 titled '*Manbir Singh vs. State of Haryana*' decided on 11.05.2017.

[9]. In view of above, without adverting to the merits of the case, I am of the view that petitioner, who is in custody since 30.09.2019 can be enlarged on bail.

[10]. In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

[11]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

March 03, 2020

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No