

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

Date of Decision : August 21st, 2020

1. CRM-M-13215- 2020

Rajo PETITIONER(S)

VERSUS

State of Haryana RESPONDENT(S)

2. CRM-M-13636- 2020

Baljeet Kaur PETITIONER(S)

VERSUS

State of Haryana RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Rajesh Lamba, Advocate, for the petitioners in both cases.

Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana.

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Sanjay Kumar, J.

The petitioners in these two cases are sisters. They have

another sister, Seema. These three sisters, who are from Rajasthan, figure

as the accused in FIR No.8 dated 08.01.2020 on the file of Police Station City Fatehabad, District Fatehabad, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act,1985 (for short, 'the Act of 1985'). By way of the present petitions, filed under Section 439 Cr.P.C., the petitioners seek grant of regular bail.

As per the F.I.R., the petitioners and their sister, Seema, were apprehended standing near the Bus Stand, Fatehabad, with plastic bags. The police party issued them separate notices under Section 50 of the Act of 1985 and upon due search, found that the bags contained Kachra Doda Post (poppy straw). In all, four bags of 14 kgs. each, aggregating to 56 kgs., were seized. Rajo, the petitioner in CRM-M-13215-2020, was found carrying two such bags while Baljeet Kaur, the petitioner in CRM-M-13636-2020, was found carrying one such bag. Their sister, Seema, was allegedly carrying one bag and a one-year old child, Sameer. In consequence, the subject F.I.R. was registered against the three sisters.

The regular bail petition in CRM-M-12037-2020 filed by Seema, the petitioners' sister, was dismissed by this Court on 07.05.2020. However, Mr. Rajesh Lamba, learned counsel for the petitioners, would contend that the issue as to whether Section 37 of the Act of 1985 has application to the case was not dealt with in the proper perspective therein and addressed arguments on that aspect. According to the learned counsel, when separate notices were issued to each of the sisters under Section 50 of the Act of 1985 and admittedly, each of them was separately carrying a limited quantity of poppy straw, it would be incorrect to club the entire seized quantity for making out a case of possession exceeding the

'commercial quantity' prescribed under the Act of 1985. Learned counsel would therefore argue that Section 37 of the Act of 1985 has no application. He would point out that the bail petition of Seema, the third sister, was dismissed by applying this provision and therefore, the cases on hand require independent consideration. He would further state, on facts, that the three sisters were standing at the Bus Stand and were not travelling together and hence, they cannot be imputed with 'joint possession' and only their 'conscious individual possession' should be taken into account for the purpose of Section 37 of the Act of 1985.

Per contra, Mr. Deepak Bhardwaj, learned Deputy Advocate General, Haryana, would assert that, in terms of the replies filed by the jurisdictional police authorities in both cases, a single F.I.R. was registered against all the three accused and due investigation resulted in Rajo's disclosure statement to the effect that she alone had purchased the entire 56 kgs. of poppy straw from an unknown person in Bharatpur, Rajasthan, for Rs.30,000/-. He would further point out that the final report under Section 173(2) Cr.P.C. was already filed and 12 witnesses have been cited by the prosecution. The trial is stated to be pending before the learned Additional Sessions Judge, Fatehabad. Learned Deputy Advocate General would contend that the 'joint possession' of the accused would have to be taken into account and in consequence, Section 37 of the Act of 1985 would have application. He would argue that Sections 35 and 54 of the Act of 1985 apply and that the petitioners are not entitled to relief.

Before embarking on a factual inquiry, it would be apposite to take note of the legal regime obtaining under the Act of 1985. Section 2

(xviii) of the Act of 1985 defines 'poppy straw' to mean all parts (except the seeds) of opium poppy after harvesting, whether in their original form or cut, crushed or powdered, and whether or not the juice has been extracted therefrom.

Section 15 of the Act of 1985 provides the punishment for contravention of the provisions of the said Act in relation to poppy straw. It states to the effect that whoever, in contravention of any provisions of the Act of 1985, produces, possesses, transports, imports inter-State, exports inter-State, sells, purchases, uses or omits to warehouse poppy straw or removes or does any act in respect of warehoused poppy straw would be punishable. Clause (a) thereof deals with contravention involving a small quantity and provides for rigorous imprisonment which may extend to one year, or with fine which may extend to ten thousand rupees, or with both. Clause (b) thereof deals with contravention involving a quantity lesser than commercial quantity but greater than the small quantity and provides the punishment of rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees. Clause (c) thereof deals with contravention involving a commercial quantity and provides for rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and the liability to pay fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.

Section 2(viia) of the Act of 1985 defines 'commercial quantity', in relation to narcotic drugs and psychotropic substances, to mean any quantity greater than the quantity specified by the Central

Government, by notification in the Official Gazette. Section 2(xxiii) defines 'small quantity', in relation to narcotic drugs and psychotropic substances, to mean any quantity lesser than the quantity specified in such notification. By way of S.O. 1055(E) dated 19.10.2001, the Central Government specified the small and commercial quantities in relation to various narcotic drugs and psychotropic substances, in a tabular form. Serial No.110 in the said table deals with 'poppy straw' and provides that a small quantity in relation thereto would be 1000 grams while commercial quantity would be 50 kgs.

This being the statutory milieu, the question in the present cases is whether the quantity (56 kgs.) of poppy straw recovered from the three sisters can be clubbed together for deciding whether or not their case involves a commercial quantity, attracting Section 37 of the Act of 1985.

This issue is no longer *res integra*.

Whether recovery of contraband articles from several persons at the same time can be attributed to all of them, by way of 'joint possession', fell for curial consideration time and time again. A Division Bench of the Calcutta High Court had occasion to consider this question in '**In the matter of : Deonandan Roy**' [2016 SCC OnLine Cal 2463] and in '**In the matter of : Dipak Kr. Roy @ Dipak Roy**' [2016 SCC OnLine Cal 2464]. These were cases involving seizure of 33 kgs. of Ganja, kept in different packets, from three individuals who were on a road. Two others allegedly ran away. The argument advanced was that as the seizure was made from three of them, the total quantum of the seized contraband should be divided amongst them and thereby, each individual

portion would fall below the commercial quantity. However, the Division Bench opined that as the allegation was that it was a recovery from 'joint possession', it would not be permissible for the Court to apportion the recovered quantum amongst the individuals from whose 'joint possession' such recovery was made. The Division Bench held that the aggregate amount has to be taken into account for determining whether the quantum exceeded the commercial quantity or not.

Similar was the view taken by another Division Bench of the Calcutta High Court in '**In re :- Abu Basar Baidya**' [2016 SCC OnLine Cal 7333]. Another Division Bench of the Calcutta High Court considered this issue in '**In the matter of : Sudip Karmakar @ Bacha Bui**' [2016 SCC OnLine Cal 3465]. This was a case involving recovery of 21.765 kgs. of Ganja from two individuals. The Division Bench opined that it would not be correct to split up the total recovered quantum between or amongst the persons who are implicated as the accused in an offence under the Act of 1985 to determine as to whether the volume of the recovered contraband articles exceeded the commercial quantity or not. The Division Bench held that where there is an allegation of 'joint possession' of contraband articles, the determining factor for assessing the 'commercial quantity' would be the aggregate volume involved, quantified by adding the weight of contraband articles carried by all the accused persons, irrespective of whether the contraband articles were possessed individually or collectively. According to the Division Bench, if the allegation was one of 'joint possession' by several accused persons, there

would be no scope for arriving at the quotient by dividing the total volume of the seized contraband articles by the number of persons from whose 'joint possession' such contraband articles were seized.

The aforestated judgments, being of persuasive value, are of great guidance. It may however be noted that the issue has also been settled by this Court. A learned Judge of this Court had occasion to consider this very question in CRM-M-8723-2003, which was decided on 20.10.2003. That was also a case involving Section 15 of the Act of 1985 based on the recovery of 110 kgs. of poppy straw from three individuals. The learned Judge noted that the language used in Section 15 was: 'whoever' was guilty of contravention. Drawing support from the *Corpus Juris Secundum* Volume XCIV and the judgment of the Supreme Court in **Rai Bahadur Seth Shreeram Durgaprasad vs. Director of Enforcement [AIR 1987 SC 1364]**, the learned Judge opined that even a group of persons can be jointly held responsible for contravention of Section 15 of the Act of 1985, as they would come within the ambit of the term: 'whoever'. The learned Judge noted that there was no material in support of the plea that possession of the three persons was separate and distinct from each other and therefore, the plea to the contrary could not be accepted.

This decision was approved by a Full Bench of this Court in **Bhupinder Singh @ Bhinda vs. State of Punjab [(2005) 1 RCR (Criminal) 168 (FB)]**. This was a case involving recovery of 56 kgs. of poppy straw from two persons and the argument advanced for the purpose of securing bail by one of them was that he could only be held guilty of

possession of 28 kgs. of poppy straw, which would be less than the commercial quantity prescribed under the Act of 1985. The Full Bench took note of the observations of the Supreme Court in **Madan Lal and another vs. State of H.P. [(2003) 7 SCC 465]** to the effect that the expression 'possession' is a polymorphous term, which assumes different colours in different contexts. The Supreme Court pointed out that this term may carry a different meaning in contextually different backgrounds and it would be impossible to work out a completely logical and precise definition of 'possession', uniformly applicable to all situations in the context of all statutes. The Full Bench accordingly held that it found it difficult to support the view that at the stage of bail, it would be permissible for the Court to accept the request of the accused that recovery of a narcotic substance, jointly effected, should be divided equally amongst them for determining whether the quantity recovered was small, less than commercial or commercial and that the question of bail should be considered in the light of such division.

Though Mr. Rajesh Lamba, learned counsel, placed reliance on the judgment of the Supreme Court in **Amar Singh Ramjibhai Barot vs State of Gujarat (Appeal (Crl.) No. 1218 of 2005 dated 19.09.2005)**, the same is of no avail to the petitioners as no edict was laid down therein as to 'joint possession' in the context of a bail application. Therefore, this Court is bound by the Full Bench judgment, referred to *supra*.

Applying the aforesaid settled legal principle to the cases on hand, it may be noted that the petitioners and Seema, the third accused,

are siblings. Their relationship is not in dispute. It is also not in dispute that they were found standing together at the Bus Stand and were carrying the four seized bags of poppy straw, each of 14 kgs. One single F.I.R. was registered against all three of them. The mere fact that individual notices were issued to them under Section 50 of the Act of 1985 does not have the effect of diluting these crucial aspects. The case of the State is that they were in 'joint possession' of the recovered 56 kgs. of poppy straw. Given these admitted facts, it is not open to the petitioners, at this stage, to claim that they should be held to be in 'conscious possession' of only the specific quantity that each of them was carrying. Their relationship and the fact that they were together at the time when the recovery was effected belies such an argument and clearly makes out a *prima facie* case of 'joint possession'. In consequence, the presumption as to possession under Section 54 of the Act of 1985 would operate against them and they would also have to deal with the consequential presumption of culpable mental state under Section 35 of the Act of 1985. It is for them to rebut these presumptions before the trial Court at the appropriate time. As matters stand, in the light of the Full Bench judgment of this Court, it is not open to the petitioners to ask for apportionment of the seized poppy straw amongst the three accused so as to bring it below the commercial quantity prescribed under the Act of 1985.

In consequence, Section 37 of the Act of 1985 would have application to the present bail petitions, as the case involves more than the commercial quantity of poppy straw prescribed under the Act of 1985.

This Court finds no reasonable grounds to believe that the petitioners are

not guilty of the offence alleged against them or that they would not be likely to commit any other offence, while on bail. Be it noted that the petitioners are from the State of Rajasthan and there would be no possibility of the local police monitoring their future activities.

The bail petitions are accordingly dismissed.

August 21st, 2020
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes