

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

CRM-M-19958 of 2020

Date of decision: July 30, 2020

Taslim

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Ms. Vijay Lakshmi, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. Advocate General, Haryana.

Ashok Kumar Verma, J.

Case taken up through Video Conferencing.

This is a third petition under Section 439 Cr.P.C. seeking regular bail in a case registered against the petitioner under Sections 20 & 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “the NDPS Act”) at Police Station Sanoli, District Panipat, vide FIR No.63 dated 15.04.2019.

According to prosecution, on 15.04.2019, on receipt of a secret information, the police party headed by SI Prem Singh intercepted vehicle bearing No.UP17-P-6726 make Mahindra KUV 100 of the petitioner and co-accused Asif. Both of them tried to run away but they were apprehended by the police party. They were found keeping in their conscious possession 24 packets of *Ganja Patti* weighing 21 Kg. and 100 grams.

Learned counsel for the petitioner submits that possession of leaves of cannabis plant without tops is not an offence under Section 20 of the NDPS Act. It does not fall within the definition of Cannabis (hemp) as defined

under section 2 (iii) (b) of the NDPS Act. The provisions of Section 20 of the NDPS Act are not applicable to the recovery effected from the petitioner. The petitioner was arrested in the case on 15.4.2019 and he has undergone custody of more than one year. No purpose would be served by keeping him in custody as all the witnesses are official witnesses and no other case of similar nature is pending against the petitioner.

On the other hand, learned State counsel has opposed the prayer. He submits that petitioner and co-accused Asif were found keeping in their possession 24 packets of *Ganja Patti* weighing 21 Kg. and 100 Grams and the first regular bail petition of the petitioner has since been dismissed by this court vide order dated January 28, 2020 and there is no exceptional change of circumstances since the dismissal of the first regular bail petition.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

In the present case, the petitioner/accused alongwith co-accused Asif were found keeping in their conscious possession 24 packets of *Ganja Patti* weighing 21 Kg. 100 Grams. As per the FIR, 21 Killo 100 Grams of *Ganja* leaves were recovered from the vehicle of the petitioner, which falls in the category of 'commercial' quantity. According to the prosecution, vehicle No.UP17-P-6726 was intercepted and two boys tried to flee but they were apprehended. On checking of the vehicle, it was found that 24 packets of *Ganja Patti* were kept concealed in the secret cabin of the said vehicle.

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 and leaves of cannabis plant when not accompanied by the tops.

As per FSL report, sample recovered from accused Taslim was found having flowering/fruiting tops and seeds etc. The tests were found positive for the presence of **Tetrahydrocannabinol**, **Cannabinol** and **Cannabidiol** in the samples (1&2). Characteristics trichomes of Ganja were present in the samples (1 & 2). The samples were identified as GANJA (Cannabis). In view of FSL report, the contention advanced by learned counsel for the petitioner that mere possession of *Ganja Patti* without tops was not an offence, is devoid of merit.

Moreover, it is not disputed that the earlier bail petition moved by

the petitioner and his co-accused raising similar grounds has already been dismissed by this court vide order dated January 28, 2020. No substantial change in the previous circumstances could have been pointed out by learned counsel for the petitioner since the dismissal of the earlier bail petition of the petitioner by this court on merits. Challan has since been presented, charge under Section 20 of the NDPS Act has been framed against the petitioner and the case is now fixed for prosecution evidence.

Having regards to the aforementioned facts and circumstances, specific bar created under Section 37 of the NDPS Act, I do not deem it fit to grant the concession of bail to the petitioner, hence bail application is dismissed.

(ASHOK KUMAR VERMA)
JUDGE

July 30, 2020
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No