

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 21.12.2020

1. CRM-M No.33452 of 2020(O&M)

Arun Kumar Azad

.....Petitioner

Vs

State of Haryana

.....Respondent

2. CRM-M No.34055 of 2020(O&M)

Sunil

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. K.S. Redhu, Advocate
for the petitioner(s).

Mr. Rajat Gautam, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video conferencing.

Vide this common order, CRM-M No.33452 of 2020 titled Arun Kumar Azad Vs. State of Haryana and CRM-M No.34055 of 2020 titled Sunil Vs. State of Haryana are being disposed of. Since both the petitions have arisen from the same

FIR, therefore, common facts are being noticed.

Prayer is for grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.166 dated 17.05.2020 registered under Section 20 of the NDPS Act and Section 188 of IPC at Police Station Kalanaur, District Rohtak.

FIR was registered on the basis of secret information that the petitioner(s) along with others is involved in sale-purchase of ganja patti. In pursuance of secret information, the police party went to the bus stand after making necessary entry in the rapat *roznamcha* of the police station. ASI Manjeet Singh saw that some persons were unloading some goods from the truck. Some of the persons were having plastic bags in their hands. On seeing the police party, they fled away. Three persons namely, petitioner Arun Kumar Azad, petitioner Sunil and Jitender were apprehended at the spot. The persons fled away from the spot were found to be Manu, Kuldeep @ Palu, Robin, Vinod, Rajbir and Raju. 256.90 kgs of ganja patti was recovered from the plastic bags. There are total 8 accused, out of which, Kuldeep @ Palu, Rajbir, Vinod and Raju have been granted anticipatory bail and Robin @ Binda has been granted regular bail.

Learned counsel for the petitioner(s) 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.

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.

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.

Learned counsel further submitted that Bhang cannabis plant are of two kinds known as male and female. Female cannabis plants are called Pistillate plants, whereas male plants

are identified by SHORT Axillary dropping panicles. Female flowering tops quoted with resin are Ganja whereas fruiting leaves are called Bhang. According to Modi's Medical Jurisprudence and Toxicology, Bhang, Siddhi and Patti are Cannabis Sativa consists of dried leaves and fruiting shoots whereas Ganja has rusty green colour and a characteristic odour and consists of flowering or fruiting tops of the female plant quoted with resin. Charas is concentrated resin exuding from the leaves and stems of the plant. Learned counsel relied upon **Arjun Singh Vs. State of Haryana, 2004(4) RCR (Criminal) 506, Manjee Vs. State of Rajasthan, 1996(2) RCR (Criminal) 258** and **Sri Promodh Jha Vs. State of West Bengal, 2008(1) CHN 710** .

Per contra, learned State counsel on instructions from Investigating Officer opposed the bail on the ground that huge quantity of ganja has been recovered from the accused. As per FSL report, the contraband has been categorized as “*Greenish brown vegetative material flowering/fruiting tops and seeds*”. Petitioner(s) is/are in custody since 17.05.2020.

Looking to the aforesaid facts, in view of the situation arising out due to COVID-19 pandemic and without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner(s) on regular bail.

In view of above, both the petitions are allowed.
Petitioner(s) is/are ordered to be released on regular bail,
subject to his/their furnishing adequate bail bonds/surety bonds
to the satisfaction of the trial Court/concerned Duty Magistrate.

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

21.12.2020	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No