

Date of Decision: 06.08.2021.

...Petitioner

State of Haryana

...Respondent

Present: Mr. Rakesh Lathwal, Advocate for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.454 dated 22.09.2020, registered under Section 20 NDPS Act, 1985, at Police Station Sadar Sonipat, District Sonipat, during the pendency of the trial.

3. Learned counsel contends that the petitioner was arrested on 22.09.2020 along with co-accused Mohit and Yashbir alias Hasbir, leading to recovery of 10 kg 100 gram of ganja patti from the petitioner, 21 kg of ganja patti from co-accused Mohit and 48 kg 200 gram of ganja patti from co-accused Yashbir alias Hasbir. Learned counsel contends that the contraband recovered from the petitioner i.e. 10 kg 100 gram of ganja patti is non-commercial quantity, petitioner is in custody since 22.09.2020, challan has been presented, though charges are yet to be framed, therefore, no useful purpose would be served by keeping the petitioner behind bars.

4. Learned DAG, Haryana, contends that the petitioner is not

entitled to regular bail on account of recovery from all the three accused being commercial quantity. Learned counsel further contends that the petitioner made a disclosure statement of having purchased the contraband from co-accused Bahri Mal Nayak from Orissa and said co-accused is yet to be arrested.

5. I have considered the submissions of learned counsel for the parties.

6. Admittedly, recovery from the petitioner was of 10 kg 100 gram of ganja patti, which is non-commercial quantity. Although the sum total of recovery from all the three accused is commercial but the same cannot be added together in view of the decision of Hon'ble the Supreme Court in **Amar Singh Ramjibhai Barot vs. State of Gujarat 2005 (7) SCC 550**, wherein it has been held that where more one than one accused going together is found carrying contraband, the quantity of contraband carried by both the accused cannot be added, to bring it within the ambit of commercial quantity. Secondly the prosecution is at liberty to proceed against the co-accused, in accordance with law.

7. Accordingly, in view of the position noted above as also by taking into account the fact that the petitioner is in custody since 22.09.2020, recovery from him is of non-commercial quantity and the recovery from all three accused cannot be added together to make out commercial quantity, challan has been presented though charges are yet to be framed and trial would take considerable period of time to conclude, I am of the view that in the circumstances, no useful purpose would be

served by keeping the petitioner in custody. Resultantly, the petition for regular bail is allowed and the petitioner is ordered to be released on regular bail during the pendency of the trial, subject to his furnishing bail / surety bonds to the satisfaction of the learned CJM/Trial Court/Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C. However, nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

8. Needless to mention, in case the petitioner is involved in any other case under the NDPS, Act, 1985 irrespective of the quantity involved, while on regular bail in the instant case, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case.

9. Petition allowed in the aforementioned terms.

06.08.2021

Rajesh

(B.S. Walia)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No