

In virtual Court

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-4347-2021 (O&M)  
Date of decision: 27.07.2021

Chaman Singh

... Petitioner

Vs.

Union of India

... Respondent

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. Ruhani Chadha, Advocate  
for the petitioner.

Ms. Puneeta Sethi, Sr. Panel Counsel  
for the respondent-UI.

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**ARVIND SINGH SANGWAN, J. (ORAL)**

This is 2<sup>nd</sup> petition for grant of regular bail in Complaint bearing NCB Crime No.41/2018 dated 09.10.2018 under Sections 8, 20, 29, 60 of NDPS Act, registered at Police Station Narcotic Bureau, Zonal Unit, Chandigarh; earlier one was dismissed as withdrawn on 22.12.2020.

Learned counsel for the petitioner submits that as per complaint filed by NCB against three persons i.e. petitioner Chaman Singh, co-accused Budhi Parkash and Dharmendra Kumar, on 08.10.2018, on receiving an information that the petitioner is dealing in narcotic substance and is bringing charas from Chamba to Ludhiana in his Bolero pickup bearing registration

No.HP-73A-1337 and will supply the same at Ludhiana, a raiding team was constituted. Thereafter, again information was received that Chaman Singh will deliver the charas between 07.00 pm to 08.00 pm and information in this regard was reduced into writing and same was sent to the Intelligence Officer. The raiding team kept a surveillance and at 07.30 pm, Mahindra pickup vehicle bearing registration No.HP-73A-1337 was noticed coming from vegetable market side and it was signalled to stop. Driver of the vehicle disclosed his identity as Dharmendra Kumar. Petitioner Chaman Singh was sitting next to the driver and third person disclosed his name as Budhi Parkash. Thereafter, by following the procedure, search of the vehicle was conducted and the petitioner took out one yellow sack and handed over the same to Investigating Officer Ajit Pal Singh, from which five blue coloured plastic bags, weighing 2.50 kg of ganja, were recovered. The petitioner was arrested and thereafter, on the next day, again 12.6 kg of charas was recovered from cavity of the vehicle as per disclosure statement of the petitioner.

Learned counsel for the petitioner further submits that the petitioner is in long custody since 13.10.2018 and is not involved in any other case under NDPS Act. It is also submitted that co-accused Budhi Parkash has already been released on regular bail vide order dated 20.01.2020 passed in CRM-M-43988-2019 and another co-accused Dharmender Kumar @ Dharmender has also been released on regular bail vide order dated 17.02.2020 passed in CRM-M-5979-2020.

Learned counsel for the petitioner has further argued that in para

No.76 of the complaint, it is stated that as per report of CRCL, New Delhi, it tested positive for charas. Learned counsel has referred to the percentage of THC, which is shown to be 4.4%, out of gross weight of the sample i.e. 26 gram. It is further submitted that in the second sample, percentage of THC was 8.7% or 11.5%.

Learned counsel has further referred to an order dated 28.05.2018 passed in CRM-22440-2017 in CRA-D-163-DB-2017 by the Division Bench of this Court, wherein it is observed as under: -

*“...For the purpose of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), which provides punishment for contravention in relation to cannabis plant and cannabis and the definition of cannabis and cannabis plant under Section 2 (iii)(a)(b)(c) and Section 2(iv) of the NDPS Act defining cannabis plant, we have taken into consideration the fact that any quantity above 1 kg containing Tetrahydrocannabinol would be “Charas”. Any quantity above 20 kgs. containing Tetrahydrocannabinol would be “Ganja”, whereas for “Bhang”, there is no commercial quantity prescribed.*

*Counsel for the applicant-appellant has referred to Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology as discussed in the judgment Nagender Shah Versus State of H.P. by a Division Bench of Himachal Pradesh High Court reported as 2010(4) R.C.R. (Criminal) 194, to clarify that in*

*case of “Bhang”, Tetrahydrocannabinol in the sample stuff would be 15% and in the case of “Ganja,” it would be 25% and in case of “Charas”, it would be between 25 to 40%.*

*In view of the said submission and the percentage of the Tetrahydrocannabinol, other cannabinoids and cystolithic hair in the sample, we called for the report from the Forensic Science Laboratory, Punjab, and have also tried to seek clarification as to what was the percentage of Tetrahydrocannabinol in the sample in this case to arrive at a prima facie conclusion that it was actually “Charas” and not “Ganja” as the quantity of resin determined as 22.62% appears to be vague and uncertain to us as it was not clear whether the resin would be Tetrahydrocannabinol or any other chemical in the sample.*

*The affidavit submitted by the Assistant Director (Toxicology), Forensic Science Laboratory, Punjab, indicates that in context to the definition of cannabis under Section 2(iii)(b) of the NDPS Act and in context to the Clarke's Isolation and Identification of Drugs under the heading “cannabis”; the observations in Modi's Medical Jurisprudence & Toxicology and the Recommended Methods of United Nations Office on Drugs Crime (UNODC) regarding identification and analysis of cannabis and cannabis products, the contraband in the present case has been described as “Charas”. The operative part of the*

*affidavit reads as under:-*

*“10. That the content of the THC is not the only parameter to define the type of cannabis product as the content of THC vary from sample to sample and also depends upon its storage condition. Various Analytical Techniques such as Physical Examination, Microscopic Characterization, Chemical Testing and Instrumental techniques are applied to identify the type of Cannabis product [ as per Directorate of Forensic Science Services (DFSS) manual based on United Nations Office on Drugs and Crime (UNODC) manual]. On the basis of above mentioned Tests and Techniques the sample in this case has been identified as Charas with 22.62% resin extract (THC) in it. The sample of this case has been described as Charas as the same has been found fulfilling all the tests as mentioned above.”*

*We have also heard the Assistant Director (Toxicology), Forensic Science Laboratory, Punjab, and considered the literature referred to by her in the Court and arrived at a prima facie conclusion that the percentage of resin extract determined by the Laboratory is actually not giving the exact percentage of Tetrahydrocannabinol and other cannabinoids and is a rough estimate of the contents of cannabinoids in the resin extract. In Nagender Shah's case (supra), it has been observed that mere*

*presence of cystolithic hair in fabric of cannabis plant do not mean that analysed stuff is “Charas” and not other product of cannabis...”*

It is thus argued that since as per the complaint, the percentage of THC in sample A-1, B-1 and C-1 was 4.4%, 8.7% and 11.5%, respectively, therefore, it will be a debatable issue to be decided during the course of trial whether the recovered contraband would fall in the definition of charas or ganja or bhang in terms of judgment of HP High Court in **Nagender Shah Vs. State of H.P., 2010 (4) RCR (Crl.) 194.**

In support of his arguments, learned counsel has also relied upon the order dated 13.07.2018 passed in CRM-M-266-2018 (Jangir Singh Vs. State of Punjab), the order dated 23.03.2021 passed in CRM-M-19050-2020 (Sahil Vs. Union of India) and the order dated 17.09.2018 passed in CRM-M-36081-2018 (Rajeev Chauhan Vs. Union of India), wherein on similar grounds, bail was granted.

In reply, learned Sr. Panel Counsel has submitted that recovery from the petitioner is of commercial quantity and therefore, he is not entitled to bail in terms of bar under Section 37 of NDPS Act. It is further submitted that NCB, before effecting the recovery, followed the proper procedure and the petitioner being owner of the vehicle was found to be in physical possession of the drugs recovered from him and on the basis of custody certificate, she has submitted that the petitioner is lodged in jail since 13.10.2018 i.e. about 02 years and 09 months and is not involved in any other case under NDPS Act,

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though he is involved in one case under Indian Forests Act in Himachal Pradesh.

Learned Sr. Panel Counsel has further submitted that the case is now fixed for recording the prosecution evidence and due to COVID-19 situation, the trial was delayed, which was beyond the control of NCB.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioner has raised a moot point regarding percentage of THC as per report of CRCL, New Delhi, as stated in para No.76 of the complaint and also in view of the fact that the petitioner is in custody for the last about 02 years and 09 months; he is first offender; he is not involved in any other case under NDPS Act; trial is not proceeding due to COVID-19 and also considering the fact that two co-accused of the petitioner have already been released on regular bail, I deem it appropriate to grant regular bail to the petitioner.

In view of the above, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

**[ ARVIND SINGH SANGWAN ]**  
**JUDGE**

27.07.2021  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No