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

(Through Video-conferencing)

**CRM-M No.13518 of 2021(O&M)
Date of Decision: 04.08.2021**

Irlasamrat

.....Petitioner

Vs

State Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rahul Rathore, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.574 dated 28.09.2019 registered under Section 20 of the NDPS Act (Section 61 of the NDPS Act added later on) at Police Station City Ballabgarh, District Faridabad.

As per prosecution case, the FIR was registered on the basis of secret information that two young boys namely Irlasamrat (petitioner) and L. Ishwar are involved in selling ganja and they can be apprehended along with ganja, if naka is

installed. The information was treated to be correct. Both the accused were apprehended. Both were carrying trolley bags in their hands and ganja was recovered from both the bags. 15 kgs 500 grams of ganja was recovered from the petitioner, whereas 16 kgs 200 grams of ganja was recovered from co-accused L. Ishwar. Bail has been declined to the petitioner by treating both the recoveries together to hold the same to be commercial in nature.

Learned counsel for the petitioner refers to **Amar Singh Ramjibhai Barot Vs. State of Gujarat, 2005(3) Apex (Criminal) 326 (SC), Rakesh Kumar Vs. State of Punjab, 2014(1) CrI. CC 159, CRM-M No.15957 of 2020** titled **Ravindra Mahato Chauhan Vs. State of Punjab** decided on 21.07.2020 and **CRM-M No.17683 of 2019** titled **Manoj Kumar Vs. State of Punjab** decided on 22.07.2019 and contends that quantity of contraband carried by both the accused could not be added to bring the same within the meaning of commercial quantity. The contraband was recovered on personal search of the accused.

Learned State counsel submits that the case of co-accused Ishwara Prashad was got dismissed as withdrawn vide order dated 12.03.2020 passed in CRM-M No.5508 of 2020 by the Co-ordinate Bench.

In order to verify the listing of the present case before this Court, a specific information was sought from the listing branch of this Court. The concerned official of the branch has informed the Court that the cases which were listed before the Hon'ble Bench after 24.03.2020 and the said Hon'ble Bench is sitting in the said roster on the particular day, then the cases will be listed before the same Hon'ble Bench as per last listing status. The aforesaid case was not listed before the Co-ordinate Bench as there was marking of the case by the Secretariat of Hon'ble the Chief Justice as per roster of the Benches w.e.f 28.01.2021. This Court has roster marking of B-5. According to listing status of the relevant date, this case was marked against B-5 roster position along with three more cases titled Pardeep Kumar Vs. State of Haryana, Dharam Singh @ Kala Vs. State of Haryana and Mandeep Singh Vs. State of Punjab.

In view of aforesaid factual position, I deem it appropriate to hear this case as the same has been listed in the roster marking of B-5.

Perusal of the FSL report would show that presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol were found to be positive in the samples. No percentage was shown.

As per observations of Division Bench of Himachal Pradesh High Court in **Nagender Shah Vs. State of H.P.,**

2010(4) RCR (Criminal) 194, it has been clarified that in case of Bhang, Tetrahydrocannabinol in the sample stuff would be 15,% in the case of ganja, it would be 25% and in case of charas, it would be between 25 to 40%. In the present case, no percentage has come forth in the FSL report submitted by learned State counsel in whatsapp group. In the aforesaid FSL report, physical appearance of the sample was shown to be greenish brown vegetative material having flowering/fruited tops and seeds etc.

In **CRM No.22440 of 2017** in **CRA-D No.163-DB of 2017** titled **Varinder Kumar Vs. State of Punjab** decided on 28.05.2018, it has been observed that percentage of tetrahydrocannabinol in the sample would *prima facie* show whether it is actually bhang, ganja or charas.

Learned counsel further submits 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.

Keeping in view the physical appearance of the sample, it would be debatable as to the contents of ganja. Moreover, individual recovery has to be treated which falls under non-commercial quantity. Petitioner is in custody since 28.09.2019. Bail of the co-accused was withdrawn on 12.03.2020.

Keeping in view the custody of the petitioner and the aforesaid incriminating facts, I deem it appropriate to consider the prayer for grant of regular bail subject to heavy conditions as the petitioner is resident of Andhra Pradesh.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing heavy 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.

04.08.2021	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No