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

**CRM-M-18110-2021
Date of Decision: 01.11.2021**

SURENDER

..... Petitioner

Versus

STATE OF HARYANA

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

SUDIP AHLUWALIA, J. (ORAL)

This is a petition for regular bail under Section 439 Cr.P.C. on behalf of the petitioner, in case FIR No.5 dated 05.01.2021, under Sections 20 of the NDPS Act, 1985, registered at Police Station Rohtak Sadar, District Rohtak.

[2]. The petitioner by now has remained in detention for almost 10 months since 05.01.2021. He is alleged to have been apprehended along with one Dharambir while travelling by a white colour Accent Car bearing Registration Number HR-46 E-8071. Identical quantity of contraband in the form of Charas weighing 500 grams (including the packets in which the same was packed), were recovered from the petitioner and the co-accused Dharambir.

Ld. Counsel for the petitioner submits that co-accused

Dharambir has already been granted bail by the Ld. Court below (Additional Sessions Judge, Rohtak) in CIS No.BA1172 of 2021 on 13.07.2021, which submission is conceded too on behalf of the State.

[4]. Ld. Counsel for the petitioner has also relied upon the judgment of this Court in **“Vakil Vs. State of Haryana 2015(6) RCR (Criminal) 754”**, in which bail was granted to the concerned applicant from whom contraband equivalent to the exact quantity as notified by the Central Government had been recovered, and it was held that according to the definition of “commercial quantity” in Section 2 (viia) of the NDPS Act, is “any quantity which is **greater**” than that specified by the Central Government in the Official Gazette.

[5]. Reliance has also been placed upon another judgment of this Court in **'Nirmal Singh Vs. State of Punjab 2016 (2) RCR(Criminal) 112'**, in which regular bail was granted to the concerned petitioner from whom 50 Kg of poppy husk (which is equivalent to the quantity specified by the Government within the meaning of Section 2(biia) of the NDPS Act), was alleged to be recovered. In that case, the weight of the contraband as being 50 Kg was found to be by including the weight of bag in which the same was being carried, on account of which the petitioner was ordered to be released on regular bail.

[6]. In the present case also the total recovery from both the accused persons in the case happens to be 500 grams + 500 grams, totaling 01 Kg which equals the quantity specified for the contraband/Charas by the Government, and therefore, considering the definition of “commercial quantity” as already quoted above, it cannot be regarded as such, especially considering the decision in Vakil Vs. State of Haryana (supra).

[7]. Secondly, even in the present case, weight of the contraband was taken by including the weight of bags, which were being allegedly carried by the petitioner and the co-accused, and which again would imply that the actual combined weight would have been somewhat less than 01 Kg of the recovered contraband, itself.

[8]. Considering, all the aforesaid factors as well as long detention undergone by the petitioner and also in view of the fact that the co-accused Dharambir, who is on identical footing of the petitioner, has already been granted regular bail, the petitioner is ordered to be released on bail, subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

[9]. Disposed off.

01.11.2021

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(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No