

202 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-24973-2021  
Date of Decision:13.07.2021

TAKDIR ... PETITIONER  
V/S  
UT CHANDIGARH ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Parmod Kumar, Advocate for the petitioner.

Mr. Prateek Gupta, Addl. Public Prosecutor  
for U.T. Chandigarh.

*(The case has been taken up through video conferencing on  
account of Covid-19 pandemic)*

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VIVEK PURI, J. (ORAL)

Takdir-petitioner has filed the third bail application under Section 439 Cr.P.C. for grant of regular bail in case FIR bearing No.16 dated 21.01.2020 under Section 20 & 29 of NDPS Act, registered at Police Station West Sector-11, Chandigarh.

The first application for bail bearing CRM-M-14896-2020 was dismissed as withdrawn on 17.7.2020. The second application for bail bearing CRM-M-35083-2020 was dismissed in terms of a speaking order dated 6.11.2020.

Briefly, the allegations as putforth are to the effect that on 21.01.2020 the petitioner alongwith the co-accused namely, Jagdish were apprehended by the police while they were carrying two bags. On seeing the police party they tried to throw the bags. From the search of the bags, 20 kg 600 grams and 20 kg 500 grams of “Ganja” was recovered.

It has been contended by the learned counsel for the petitioner that the quantity of contraband exclusively recovered from the possession of

the petitioner is 20 Kg 600 grams which is marginally above the commercial quantity, he is in custody since 21.01.2020 and there is a discrepancy with regard to the time as mentioned in the General Diary and the FIR.

It has been pointed out that the challan has already been presented in the Court and two witnesses have already been examined.

On the contrary, learned State counsel has opposed the bail application and has argued that the petitioner alongwith co-accused were seen coming together and the recovery has been effected from both of them. The entire recovery has to be clubbed for the purpose of working out the quantity of the contraband. In the instant case, the total quantity of the contraband is to extent of 41 Kg 100 grams of "Ganja" which cannot be termed to be marginally above the commercial quantity. Moreover, the discrepancy, if any, in the time recorded is only clerical/typographical in nature.

It may be mentioned here that the earlier application for bail was dismissed on 6.11.2020 by making following observations:-

*"In this regard, it can be noted with significance that in a decision dated 21.08.2020 rendered in **CRM-M-13215-2020, titled as Rajo Vs. State of Haryana**, the question was as to whether the quantity (56Kg) of poppy straw recovered from three sisters can be clubbed together for deciding whether or not their case involves the commercial quantity, attracting Section 37 of the NDPS Act. It has been held in the aforesaid decision that it was not open to the petitioners to claim that they should be held to be in "conscious possession" of only the specified quantity that each of them was carrying.*

*The aggregate amount of the contraband being carried by both the accused has to be considered for determining the quantity and the same cannot be allowed to segregated. It is pertinent to note that the petitioner alongwith the coaccused were coming together and were carry contraband with them. Consequently, it cannot be said that the quantity of contraband recovered from the possession of the petitioner is marginally above the commercial quantity.*

*In the instant case, the stringent provisions of Section 37 of the NDPS Act come to play. There is nothing to suggest that the petitioner has not*

*committed the offence and is not likely to commit the offence while on bail.*

*Keeping in view, the entire circumstances of the case, no justified ground is made out to extend the concession of bail to the petitioner.*

*For the aforesaid reasons, the present petition for regular bail is dismissed.”*

The arguments raised by learned counsel for the petitioner have already been dealt with and the earlier application for bail has been dismissed in terms of the speaking order dated 6.11.2020. The typographical/clerical error as pointed out in the General Diary and FIR is insignificant and no significant change of circumstance is made out to extend the concession of bail to the petitioner.

Lastly, it has also been sought to argue that the trial of the case is likely to get delayed on account of restricted hearing of the Courts due to Covid-19 Pandemic. In this regard, it may be mentioned here that the case of the petitioner does not fall in the category of the cases in which interim bail/bail has to be granted as per the instructions of the High-Powered Committee.

Keeping in view the totality of circumstance, no justified ground is made out to extend the concession of bail to the petitioner.

Dismissed.

**13.07.2021**

Janki

**(VIVEK PURI)  
JUDGE**

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