

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25786-2021 (O&M)
Date of Decision: 30.11.2021

(I)

Rajbir

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CRM-M-30907-2021 (O&M)

(II)

Paramjeet

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate, for the petitioner (s).

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J.

(1) The present two bail petitions are taken up together for final disposal since both the petitions arise out from the same FIR.

(2) Both the petitions have been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioners in FIR No.21 dated 05.02.2021, under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar

Bahadurgarh, District Jhajjar.

(3) Petitioner-Rajbir has filed CRM-M-25786-2021 and petitioner -Paramjeet has filed CRM-M-30907-2021.

(4) For the sake of brevity, facts are being taken up from CRM-M-25786-2021, titled 'Rajbir Versus State of Haryana'.

(5) As per the FIR a secret information was received by the police party that the petitioners alongwith some other persons are carrying heavy quantity of intoxicant substance i.e. 'ganja patti' and in sometime, they all in their Mahindra XUV No. DL-10-CT-1531 and car Camper GENIO bearing registration No. HR-14J-3510 will be supplying the intoxicant substance i.e 'ganja patti' and will be going from Village Saulanda through Sidhpur and will be heading to Nazafgarh and if nakabandi is being done at Saulanda-Sidhipur road, then intoxicant substance i.e. 'ganja patti' can be recovered from them. On receiving this information, ruqqa under Section 42 of the NDPS Act was sent to the Police Station Sadar Bahadurgarh for registering the rojnamcha and also for sending the information to senior police officer and thereafter, nakabandi was prepared at the aforesaid point and checking was being done of the vehicles and efforts were also made to join the independent witnesses from the public but everyone showed their helplessness. After sometime, two cars were seen coming from Village Saulanda and the car which was first seen coming was Mahindra XUV No. DL-10-CT-1531 and the car which was following the first car was HR-14-J-3510. The cars were stopped at nakabandi and the boys who were sitting in the car were caught and after that, the names of everyone was asked. The driver of Mahindra XUV No. DL-10-CT-1531 disclosed his name as Rajbir son of Jitram (Petitioner in CRM-M-25786-2021) and the person sitting next

to him disclosed his name as Paramjeet son of Kuldeep (Petitioner in CRM-M-30907-2021) and the person who was sitting at the back seat disclosed his name as Manoj son of Om Parkash. The driver of the other car i.e. Mahindra Camper GENIO bearing No. HR-14J-3510 disclosed his name as Vijay Pal son of Mahabir and the person who was sitting next to the driver seat disclosed his name as Sanjeev Kumar son of Nafe Singh. The Investigating Officer had suspected that the persons and their car is having some intoxicant substance and their search is to be conducted and they have a legal right that they can get their search conducted before a Magistrate or some Gazetted Officer and apprised them about Section 50 of the NDPS Act separately and on the said notice, the accused signed and answered that they want to get their search conducted before some Gazetted Officer. Vijaypal, after understanding the contents of notice under Section 50 of the NDPS Act, gave his consent to be searched from Gazetted Officer and affixed his right thumb impression on it. Thereafter, Daljit Singh, SDE, PWD BR, Bahadurgarh reached at the spot in his Government vehicle and disclosed about his name, designation and place of posting to the accused persons and asked everyone about the search and then everyone said that they want to get their search done from the aforesaid Daljit Singh. Thereafter, ASI in the presence of Daljit Singh, SDE, PWD BR conducted the search of the accused persons namely, Rajbir, Paramjeet and Manoj and from their vehicle i.e. Mahindra XUV No. DL-10-CT-1531 from the folded seats at the back of the car, two plastic bags colour white were recovered and Mark A and Mark B were affixed and after weighing on the electronic weighing machine, the weight of each bag came out to be 20/20 Kgs. each. Thereafter, seal 'DS' was affixed on the parcel Mark A and Mark B including car

Mahindra XUV No. DL-10-CT-1531 and RC was taken into possession. The other car i.e. Mahindra Camper GENIO in which Vijay Pal and Sanjeev Kumar were sitting, a search was conducted and on the back portion (Dala), three plastic bags were found and a cabin which was built below the Dala, 9 plastic bags were recovered which were numbered as 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12. The total recovered bags of ganja patti were weighed on electronic machine and weight of bag from Mark 1 to Mark 10 came out to be 20/20 Kgs. each and weight of bag Mark 11 and Mark 12 came out to be 30/30 Kgs. each and on the said parcels seal of 'DS' was affixed.

(6) The learned counsel for the petitioners has submitted that in the present case so far as the present two petitioners are concerned, allegedly they alongwith other person namely Manoj were found to be in possession of 20/20 Kgs. two bags of ganja patti, totalling 40 Kgs. from one car, although the total recovery from both the two cars was 300 Kgs. of 'ganja patti'. He submitted that although quantity of 40 Kgs. falls within the category of commercial quantity under the NDPS Act but the seized material does not fall within the purview of Section 2 (iii) (b) of NDPS Act and, therefore, FIR registered under Section 20 of NDPS Act would not be sustainable. He submitted that the seized material was not 'ganja' and it was only a 'ganja patti' and, therefore, the petitioners are entitled for the grant of bail. He further submitted that no independent witness was joined and, therefore, the procedure adopted by the police was faulty. The learned counsel referred to the report of Regional Forensic Science Laboratory, Sunaria (Rohtak), Haryana (Annexure P-4), wherein description of all the 14 parcels have been mentioned as **“Greenish brown vegetative material having flowering/fruited tops and seeds etc”**. He submitted that the

material confiscated was a mixture and it has not been identified by the Forensic Science Laboratory as to how much content of ganja, if at all was present in the mixture and what was the moisture content in the same. In this context, the learned counsel made two fold submissions. Firstly, the material cannot be termed as ganja as a whole as the confiscated material was only a mixture and secondly, the moisture content had to be excluded from the total weight and, therefore, the weight of 40 Kgs. allegedly recovered from one vehicle may ultimately come out to be less than 20 Kgs. and therefore, the alleged recovery may be of a non-commercial quantity. The learned counsel while referring to Section 2(iii) (b) has submitted that ganja is defined to be flowering or fruiting tops of the cannabis plant excluding seeds and leaves whereas in the FSL report, the aforesaid flowering/fruiting tops were found alongwith seeds etc. and, therefore, the confiscated material was not covered under the definition of Section 2(iii) (b) of the NDPS Act.

(7) The learned counsel for the petitioners relied upon various judgments to support his contentions. He relied upon a judgment of this Court in ***CRM-M No. 43302 of 2016***, titled ***'Isham Singh Versus State of Haryana'***, decided on 08.12.2016 to contend that similar observations pertaining to seized material were recorded by the Forensic Science Laboratory in that case as well and this Court had observed that the percentage of the tops and the seeds in the sample was not determined and the identification of the contents and the quantity of actual ganja will be a debatable proposition and, therefore, bail was granted by this Court. He further referred to another judgment of this Court in ***CRM-M-33452 of 2020***, titled ***'Arun Kumar Azad versus State of Haryana'***, decided on

21.12.2020 and in that case as well, the report of the FSL was identical as that of the present case i.e. 'Greenish brown vegetative material flowering/fruited tops and seeds' and the petitioners of that case were granted bail by this Court. The learned counsel further referred to judgment of this Court in *CRM-M-11764-2020*, titled '*Sonu Versus State of Haryana*', decided on 21.05.2020, *CRM-M-4347-2021*, titled '*Chaman Singh Versus Union of India*', decided on 27.07.2021 and *CRM-M-17021-2021*, titled '*Gurpreet Kumar Versus State of Punjab*', decided on 31.08.2021 to support his contentions. He further referred to a judgment of Bombay High Court in '*Kallappa Irappa Biradar Versus The State of Maharashtra*', *Criminal Bail Application No. 590 of 2021*, decided on 20.08.2021.

(8) On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana while opposing the grant of bail to the petitioners has submitted that a plain and simple language of Section 2(iii) (b) of the NDPS Act would show that the substance which was found in the confiscated material falls within the definition of 'Ganja' and therefore it was a 'Narcotic Drug'. He further referred to the observations made by the Forensic Science Laboratory wherein it has been opined that the samples of all the 14 packets were identified as ganja and, therefore, once the Forensic Science Laboratory comes to a conclusion that the confiscated material was ganja, the petitioners cannot create a camouflage by terming the word 'Ganja' as 'Ganja patti'. He further submitted that all the judgments referred by the learned counsel for the petitioners are distinguishable from the present case. He further submitted that since the confiscated ganja from the vehicle on which both the petitioners were travelling was 40 Kgs. and the

remaining 260 Kgs. was recovered from another vehicle and which were apprehended together, the total quantity comes to be 300 Kgs. which falls under the commercial quantity and therefore the prayer of the petitioners for grant of bail is hit by the bar contained under Section 37 of the NDPS Act. He submitted that there is no ground available with the petitioners to make a departure from the bar contained under Section 37 of the NDPS Act and has therefore, prayed for dismissal of both the petitions.

(9) I have heard the learned counsel for the parties.

(10) Before proceeding further, the relevant portion of the FSL report needs to be reproduced as under:-

Description of article contained in parcel

Physical appearance: *Greenish brown vegetative material having flowering/fruiting tops and seeds etc.*

Observations:

- *The tests were positive for the presence of Tetrahydrocannabinol. Cannabinol and Cannabidiol in the samples (1 to 14).*
- *Characteristics trichomes of Ganja were present in the samples (1 to 14).*
- *The tests were positive for the presence of Ganja in the samples (1 to 14)*

Opinion: *The samples (1 to 14) were identified as GANJA.*

(11) The relevant provisions of the NDPS Act, 1985 are also reproduced as under :-

2(iii) 'cannabis (hemp) 'means:

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis

plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

xxxx

xxxx

xxxx

(xiv) 'narcotic drug' means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods;

xxxx

xxxx

xxxx

20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable:

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees”

(12) As per the FSL report, the physical appearance of the confiscated narcotic drug was 'Greenish brown vegetative material having flowering/fruited tops and seeds etc.' and the tests were found positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol in the samples. The FSL report opined that the samples are identified as GANJA. The aforesaid findings of the Forensic Science Laboratory are required to be co-related with the definition of cannabis under Section 2(iii) of the NDPS Act. Cannabis (hemp) has been defined to mean charas under clause (a) which is a separated resin, in whatever form, which is obtained from cannabis plant. Ganja has been defined under clause (b) and would mean flowering or fruited tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated or any mixture, with or without any neutral substance of any of the above forms of cannabis or any drink prepared therefrom.

Since the legislature in its wisdom has used the expression 'means' for defining cannabis, the same is exhaustive in nature. The plain and simple language used for defining ganja would show that it means the flowering or fruiting tops of the cannabis plant but excluding the seeds and leaves when not accompanied by the tops. In other words it means that when tops are accompanied, then seeds and leaves are not to be excluded. It would also mean that if the material is exclusively seeds and leaves without any flowering or fruiting tops, then it may not be a ganja but once flowering or fruiting tops are included in the material, then even if there is presence of seeds and leaves, then still it will be ganja. Apart from the same, such a material which includes flowering or fruiting tops of the cannabis plant would still be ganja even if by whatever name they may be known or designated. In other words the expression 'Ganja' if it is known or called by any other expression, still by way of legislative command, the same would still be within the purview of the definition of 'Ganja'. Furthermore, as per Section 2(iii) (c) even a mixture with or without any neutral material of any of the above forms of cannabis or any drink prepared therefrom would also be within the meaning of expression 'Cannabis'. In other words, even a mixture of charas and ganja would also fall within the definition of cannabis with or without any other neutral material.

(13) The arguments raised by the learned counsel for the petitioners that the confiscated material was only 'Ganja patti' and not 'Ganja' would not be sustainable in view of two reasons. Firstly, the plain and simple language used under Section 2(iii) of the NDPS Act and secondly, clear findings of the Forensic Science Laboratory that the confiscated narcotic drug was ganja. The reasoning put forward by the learned counsel for the petitioners

that as per the FSL report, the material contained not only flower/flowering tops but also seeds etc. would therefore not be a ganja in view of Section 2(iii) (b) of the NDPS Act is not sustainable. For the purpose of interpretation of a Statute, there are well accepted rules of interpretation. For the purpose of reading of a statute or a provision thereof, three such rules are Rule of literal construction, Rule of liberal construction and the Mischief rule. Whenever any statute is to be construed, the first rule of interpretation applicable would be the rule of literal construction which is the first and primary rule. According to the rule of literal construction, the intention of legislature should be found in the words which are used by the legislature itself and if the words are capable of only one construction, then it would not be open to the Courts to adopt any other construction on the ground that such other construction is better or reasonable. If the words and expressions used in the Section are clearly plain and unambiguous, then no other different interpretation can be made and rather it becomes a duty of the Court to implement those provisions in the manner in which they are required to be implemented by the wisdom of legislature. In the present case, while reading the plain and simple language used for defining ganja, it has been provided under Section 2 (iii) (b) of the NDPS Act that ganja would mean flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops). A plain reading of the same would show that when flowering or fruiting tops of the cannabis plant are present, then even if they are accompanied by seeds and leaves, it would still be ganja and furthermore, by whatever name they may be known or designated. Therefore, the argument raised by the learned counsel for the petitioners is wholly unsustainable and contrary to the plain language

incorporated by the legislature in Section 2(iii) (b) of the NDPS Act. Another argument raised by learned counsel for the petitioners that no independent witness was joined is unsustainable because even as per FIR, despite efforts made, nobody agreed and had shown their helplessness.

(14) The judgments relied upon by the learned counsel for the petitioners are also distinguishable from the present case. In ***Isham Singh Versus State of Haryana (supra)*** this Court considered the fact that the percentage of the tops and of the seeds in the sample was not determined and, therefore, the identification of the contents and the quantity of actual ganja was a debatable proposition. Although the confiscated quantity was 49 Kgs 500 grams which was a commercial quantity but the provision of Section 37 of the NDPS Act was not considered. So far as the reasoning that percentage and the actual quantity are yet to be determined, the proposition of law with regard to the same has now been settled by the Hon'ble Supreme Court in ***'Hira Singh and another Versus Union of India and another' [2020(2) RCR (Criminal) 523]*** that a neutral substance cannot be excluded from the total quantity while determining the actual weight. So far as the applicability of Section 37 of the NDPS Act is concerned, whenever the confiscated contraband was of commercial quantity, then the provision of Section 37 of the NDPS Act is mandatory. The Hon'ble Supreme Court in ***'State of Kerala etc. Versus Rajesh etc'. [2020(1) RCR (Criminal) 818]*** observed that operative part of Section 37 of the NDPS Act is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application and the second is that the Court must be satisfied that

there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the bar for granting bail operates. Therefore, the aforesaid judgment cited by the learned counsel for the petitioners is not applicable to the present case.

(15) In ***Arun Kumar Azad Versus State of Haryana (supra)*** this Court although referred to the FSL report whereby the contraband was categorized as 'Greenish brown vegetative material flowering/fruited tops and seeds' but bail was granted to the petitioner of that case in view of a situation arising out of Covid-19 pandemic.

(16) In ***Sonu Versus State of Haryana (supra)*** again reference was made to the FSL report pertaining to the confiscated material but the State counsel did not contest the correctness of the submissions made by the counsel for the petitioner.

(17) In ***Chaman Singh Versus Union of India (supra)*** this Court referred to the judgment of Himachal Pradesh High Court in '***Nagender Shah Versus State of H.P.***'[2010(4) RCR (Criminal) 194] and also considered the fact that the petitioner had raised a moot point regarding percentage of THC as per the report of the Laboratory, apart from the long custody of the petitioner and, therefore, granted bail. However, after the passing of the judgment by the Himachal Pradesh High Court in ***Nagender Shah*** case, a Full Bench of Himachal Pradesh High Court in '***State of H.P. Versus Mehboon Khan***', ***Criminal Appeal No.763 of 2002***, decided on 24.09.2013 discussed the effect of percentage of tetrahydrocannabinol. The Full Bench was although dealing with the confiscated quantity of charas but has also referred to the other forms of cannabis including ganja. It was observed that the percentage of tetrahydrocannabinol in a sample of charas

is not required to be indicated as a determinative factor in support of its purity and rather mere presence of tetrahydrocannabinol in the stuff analyzed itself is sufficient to arrive at a conclusion that the same is charas and, therefore, Chemical Examiner is not under any legal obligation to state the percentage of tetrahydrocannabinol which is a narcotic substance in narcotic drugs falling in **any** of the categories, namely cannabis plant, charas, hashish oil, liquid hashish or **ganja**. It further observed that the law laid down by the Division Bench in '*Sunil Versus State of Himachal Pradesh*' [2011(5) RCR (Criminal) 726] that for want of percentage of tetrahydrocannabinol or resin contents in the samples analyzed, the possibility of the stuff recovered from the accused persons is only being only Bhang i.e. the dried leaves of cannabis plant, possession of which is not an offence, cannot be ruled out is not a good law nor any such interpretation is legally possible.

(18) In *Gurpreet Kumar Versus State of Punjab (supra)* this Court was dealing with the recovery of opium and, therefore, the aforesaid case is distinguishable from the present case.

(19) In *Kallappa Irappa Biradar Versus The State of Maharashtra (supra)* the Bombay High Court was dealing with the confiscated substance which did not include flowering or fruiting tops and in view of the same it was held that it was not ganja, whereas in the present case the confiscated material included flowering or fruiting tops and, therefore, the aforesaid case is distinguishable from the present case.

(20) The Hon'ble Supreme Court in '*Shiv Kumar Mishra Versus State of Goa*' [2009(3) SCC 797] while referring to the definition of 'Ganja' contained under Section 2 (iii) (b) of the NDPS Act observed that when the

seized Ganja consisted of greenish brown colour leafy and flowery parts of the plant, then it will fall within the definition of Ganja and would include the seeds and leaves of the cannabis plant since the seized Ganja was accompanied by the flowery parts of the plant. Furthermore, the moisture content is not to be excluded while ascertaining the total weight of seized material. Para No.11 of the judgment is reproduced as under:-

“11. The submissions made by learned counsel for the appellant are not convincing since from the evidence on record it has been established that the seized Ganja consisted of a greenish brown colour leafy and flowery parts of the plant (in moist condition) which, in terms of the definition of the expression "Ganja", would include the seeds and leaves of the cannabis plant since the seized Ganja was accompanied by the flowery parts of the plant. As far as exclusion of the moisture content of the seized Ganja is concerned, there is nothing in the Narcotic Drugs And Psychotropic Substances Act to suggest that when the weight of a quantity of Ganja is to be ascertained, the moisture content has to be separately ascertained and excluded. On the other hand, we are of the view that the weight of the contraband would be the weight taken at the time of seizure.”

(21) The arguments raised by the learned counsel for the petitioners that since the confiscated material also included seeds etc. and the moisture content is also required to be excluded and, therefore, it would not fall within the definition of Section 2 (iii) (b) of the NDPS Act, is not sustainable.

(22) Therefore, in view of the aforesaid legal and factual position, the

description of confiscated narcotic drug i.e. Greenish brown vegetative material having flowering/fruited tops and seeds etc. coupled with the opinion of the Forensic Science Laboratory which identified the same as 'Ganja' would fall within the definition of Section 2(iii) (b) of the NDPS Act. The expression 'Ganja Patti' used by the police cannot confer any right upon the petitioners to escape from the definition of 'Ganja' especially when the FSL report opines the same to be 'Ganja'. Furthermore, the confiscated narcotic drug is a commercial quantity of 'Ganja' and, therefore, the bar contained under Section 37 of the NDPS Act would be attracted. There is no ground available with the petitioners for making any departure from the aforesaid bar.

(23) In view of the above, finding no merit in the present petitions, the same are hereby dismissed.

30.11.2021
rakesh

(JASGURPREET SINGH PURI)
JUDGE

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