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

(Through video-conferencing)

CRM-M No.28760 of 2021

Date of Decision: 30.07.2021

MOHAMMAD ASLAM

.....Petitioner

Vs

THE STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Charanpreet Singh, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.159 dated 05.10.2020, registered under Sections 20/25 of the NDPS Act and under Section 29 of the NDPS Act (added later on) at Police Station Khanna City-2, District Ludhiana.

[2]. As per prosecution case, petitioner was found sitting on the conductor seat/non-driving seat of the car. Co-accused Mohammad Saif was driver of the car. The Car was apprehended by the Police on 05.10.2020 and 48 kgs. Ganja was recovered from its dicky (rear boot space). The registration

certificate of the car was found to be in the name of Rehmat Ali son of Akhtar Ali resident of House No.275 Block-J, Sundar Nagari, Delhi.

[3]. Learned counsel for the petitioner submitted that as per FSL/Chemical Examiner's report 250 grams of greenish brown coloured flowering tops dried along with seeds of contraband were tested and on analysis presence of Tetrahydrocannabinol and other cannabinoids, cystolythic hair and 18.05% resin extract of Ganja were found.

[4]. Learned counsel with reference to the aforesaid FSL/Chemical Examiner's Report, submitted that the Division Bench of Himachal Pradesh High Court in **Nagender Shah vs. State of H.P., 2010(4) R.C.R. (Criminal) 194** has 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, it has been found to be 18.05% resin extract.

[5]. The aforesaid analogy has been relied upon by the Division Bench of this Court 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 and it has been observed that percentage of tetrahydrocannabinol in the sample would *prima*

facie show whether it is actually Charas or Ganja. In the present case, it would be either Bhang or Ganja. Learned counsel further relied upon **CRM-M No.4347 of 2021** titled '**Chaman Singh vs. Union of India**' decided on 27.07.2021 in the aforesaid context.

[6]. Learned counsel further submitted that the percentage of contraband to the extent of 18.05% resin extract would indicate intermediary stage between Bhang and Ganja. Bhang is dried leaves of cannabis plant whereas ganja is the fruiting tops of cannabis plant.

[7]. Learned counsel further submitted 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.

[8]. 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.

[9]. 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.

[10]. Learned State counsel however opposed the bail on the ground that the recovered ganja falls under the commercial category as the same is beyond 20 kgs. The other arguments would be subject to final conclusion of the trial. Challan has already been submitted, but charges have not been framed so far.

[11]. Having considered the submissions, at this stage, I find that the complicity of the petitioner on the basis of FSL/Chemical Examiner's report and on the basis of the precedents would remain debatable.

[12]. At this stage, without adverting to merits of the case, I deem appropriate to enlarge the petitioner on regular bail, who is in custody since 05.10.2020.

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

adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

[14]. Nothing expressed hereinabove would be construed to be an expression of opinion on merits of the case.

July 30, 2021	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No