

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRM-M-28021 of 2021
Date of decision:27.07.2021

Sanajir

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Shailender Kashyap, Advocate for
Mr. Parshant Sethi, Advocate for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

SUVIR SEHGAL, J.

The Court has been convened through video conferencing due to Covid-19 pandemic.

This is the second petition for grant of regular bail to the petitioner in case FIR No.335 dated 29.08.2020 registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “NDPS Act”) (Section 61 of NDPS Act has wrongly been mentioned in the petition) at Police Station Adarsh Nagar, District Faridabad. First petition was withdrawn on 02.07.2021, with liberty to file a fresh one as there were inadvertent errors in the first petition.

As per version of the prosecution, FIR was registered on the basis of a secret information that Mohammad Ansar, Abdul Sabir and their

two accomplices, were travelling in a vehicle with contraband. On the basis thereof, an EECO car was intercepted and 7 plastic bags containing ganja were recovered from its boot. The car was being driven by Mohd. Sanajir son of Satish, Mohd. Ansar was sitting on the navigator seat and Abdul Shabir son of Mehandihasan and Mohd. Sanajir son of Mustaq (present petitioner) were sitting on the rear seat.

Counsel for the petitioner contends that the petitioner is neither owner nor driver of the vehicle from which prohibited substance was recovered. He submits that the petitioner was an innocent traveller and has been falsely involved in the case. He urges that there is violation of mandatory provisions of the NDPS Act, inasmuch as a joint notice (Annexure P-2) for search has been served under Section 50 of the NDPS Act. He has placed reliance on orders, Annexures P-4 to P-6 passed by this Court, whereby, co-accused have been released on bail by this Court.

Opposing the petition, upon instructions from ASI Pardeep Kumar, State counsel submits that the contraband recovered from the car was found to be ganja weighing 63.278 kgs which falls within the ambit of commercial quantity. He submits that a perusal of the notice (Annexure P-2) shows that the same had been served for the search of the vehicle and therefore, the provisions of Section 50 of the NDPS Act do not apply. As per his instructions, the challan has been presented on 27.08.2020, the charge has been framed on 21.12.2020 and the trial is fixed for recording of statement of the prosecution witnesses.

Having considered the arguments advanced by counsel for the

parties, this Court is of the view that as the contraband recovered falls in the category of commercial quantity as per the notification issued under the provisions of the NDPS Act, rigour of Section 37, *ibid* will apply. Hon'ble Supreme Court in **State of Kerala Vs. Rajesh and others, 2020(1) RCR (Criminal) 818** has held that until and unless, the twin conditions laid down in Section 37 of the NDPS Act, are fulfilled, the accused cannot be released on bail.

Insofar as, the orders Annexures P-4 to P-6 passed by this Court are concerned, co-accused had been released on interim bail till the receipt of FSL report. The petitioner cannot get the benefit of the said orders as now FSL report has been submitted before the trial Court and the contraband has been found to be ganja.

In the above facts and circumstances, the petitioner is not entitled to be released on bail and the petition deserves to be rejected.

Dismissed.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

July 27, 2021
savita

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>