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

CRM-M-35928-2021 (O&M)

Date of decision:01.11.2021

Partap Chand

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr.Sandeep Sharma, Advocate for the petitioner.

Mr.Sandeep Singh Deol, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

FIR No.181 dated 13.10.2020, has been lodged under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Shahpurkandi, Tehsil and District Pathankot, Punjab. Through, the instant application, cast under Section 438 Cr.P.C., the bail applicant accused seeks, the, indulgence of this Court for grant of anticipatory bail.

The total haul of narcotic substance, namely cannabis/charas, as recovered from the alleged conscious and exclusive possession of the accused, carries a weight of 1 kg. In the relevant notification, though, 1 kg is detailed to be commercial quantity of the afore narcotic substance. However, bearing in mind, the definition of “commercial quantity” as embodied in Section 2(viia) of the Narcotic Drugs and Psychotropic Substances Act, 1985, provisions whereof stands extracted:-

“(viia) “commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.”

and when provisions (supra), assign to coinage “commercial quantity”, hence specified by the Central Government, in the relevant notification, the signification, that, rather quantity higher than the notified, in the apposite notification, of cannabis/charas, is commercial quantity thereof. Therefore, though 1 kg is notified in the relevant notification, to be “commercial quantity” of cannabis/charas, which is, rather the recovered narcotic substance. However, bearing in mind, the signification supra, assigned by statutory provision supra, to coinage “commercial quantity”, hence, not 1 kg thereof rather more than 1 kg thereof, becomes the commercial quantity of the seized cannabis/charas. Consequently, the seizure of 1 kg of cannabis, falls, not within the ambit of commercial quantity thereof rather falls in the zone of intermediate quantity thereof. Reiteratedly, any, weight in excess of 1 kg of charas, alone would render it to fall within “commercial quantity” thereof, and, when the afore weight of charas, became recovered from the alleged conscious, and, exclusive possession, of the principal accused, and vicariously from the possession of the bail applicant accused, thereupon weight upto 1 kg, (supra), of the relevant seizure, does not fall, within the ambit of commercial quantity thereof.

Resultantly, when in respect of an intermediate quantity, of the recovered narcotic substances, the rigor of Section 37 of the NDPS Act, is not attracted, whereupon it is deemed appropriate to grant benefit of bail to the bail applicant accused.

Therefore, and, also when the relevant recovery has been effected by the investigating officer, at the instance of the principal accused, besides when Section 20 of the NDPS Act has been added against the bail applicant accused, thereupon also, this Court is inclined to grant the indulgence, as claimed for in the instant bail application.

Hence, the bail application is allowed.

In the event of arrest of the bail applicant by the investigating officer concerned, he shall be released forthwith, on his furnishing personal, and, surety bonds in the sum of Rs.50,000/- each, to the satisfaction of the investigating officer concerned. Moreover, the afore order also subject to his furnishing and undertaking before the arresting officer that, he shall as and when required to be associated in the relevant investigations, he will associate therein, and in addition, he shall also undertake to appear regularly before the Court concerned, unless an affirmative order is made on his application, seeking exemption from his personal appearance, before the Court concerned.

Disposed of.

(SURESHWAR THAKUR)
JUDGE

01.11.2021

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Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No