

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

CRM-M-4686-2022 (O&M)
Date of Decision: 07.03.2022

Rafeek

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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

Mr. Vikrant Pamboo, DAG, Haryana.

JASJIT SINGH BEDI, J.(Oral)

The present petition has been filed under Section 439 Cr.P.C.
for grant of regular bail in case FIR No.207 dated 25.07.2021, registered
under Section 20 NDPS Act, 1985 at Police Station Sector 13-17 Panipat,
District Panipat (Annexure P-1).

As per the FIR, a secret information was given to the ASI
that two persons namely Satar Ali @ Kaku S/o Millo Mohammad and
the present petitioner, were coming from Karnal side towards Panipat in
vehicle bearing Registration No.PB65-AW-5786 and carrying charas in
heavy quantity. If naka would be laid, they could be arrested. Pursuant
thereto, the raid was conducted and two accused persons were
apprehended. The driver told his name as Sattar Ali @ Kaku and the
person sitting besides him told his name as Rafeek S/o Chokker Deen.

Shri Anil Kumar, SDO, UHBVN, Panipat arrived at the spot being the Duty Magistrate and the recovery of the contraband was effected from under the driver's seat in a black polythene.

The learned counsel for the petitioner contends that the recovery of 1 kg of charas falls within the non-commercial quantity. He submits that commercial quantity as per Section 2(vii-a) would be quantity more than that as mentioned in the Schedule. The relevant chart in this regard is reproduced hereinbelow:-

“Notification specifying small quantity and Commercial Quantity.

In exercise of the powers conferred by clauses (viia) and (xxiiia) of Section 2 of Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and in supersession of Ministry of Finance, Department of Revenue Notification S.O. 527(E) dated 16th July, 1996, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies the quantity mentioned in columns 5 and 6 of the Table below, in relation to the narcotic drug or psychotropic substance mentioned in the corresponding entry in columns 2 to 4 of the said Table, as the small quantity and commercial quantity respectively for the purposes of the said clauses of that Section.

Table

(See sub-clauses vii(a) and xxiii(a) of Section 2 of the Act)

<i>Sr. No.</i>	<i>Name of Narcotic Drug and Psychotropic Substance (International non- proprietary name (INN))</i>	<i>Other non proprietary name</i>	<i>Chemical name quantity (In gm.)</i>	<i>Small</i>	<i>Commercial Quantity (in gm./kg)</i>
	2	3	4	5	6
x	x	x	x	x	x
23.	<i>Cannabis and cannabis resin</i>	<i>Charas Hashish</i>	<i>Extracts and Tinctures of Cannabis</i>	100	1 Kg.
x	x	x	x	x	x

Section 2(vii-a), reads as under:-

“2(vii-a): “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;”

He further relies upon the following judgments:-

“1. Sonu @ Sarwan Vs. State of Haryana, CRM-M-25156-2016 decided on 29.07.2016 passed by this Court.

2. Vakil Vs. State of Haryana, (2015) 4 law Herald 3388, passed by this Court.

3. Anil Kumar Dash Vs. State of Orissa, 2015(44) RCR (Criminal) 901 passed by the Hon'ble Orissa High Court.

4. Mahavir Singh Vs. State of Haryana, 2006(1) RCR (Criminal) 799, passed by this Court.

5. Ratto Vs. State of H.P., 2004(1) RCR (Criminal) 501 passed by the Hon'ble Himachal High Court.”

Relying on the aforesaid judgments, the learned counsel contends that the recovery of 01 kg of charas would be of a non-commercial quantity and therefore, the rigors of Section 37 NDPS Act would not apply to the said recovery. He also contends that the petitioner has been in custody since 26.07.2011 and no other FIR is pending against him. He contended that since the recovery was effected from under the driver's seat of the car, the petitioner could not be said to be in conscious possession of the same.

On the other hand, learned State counsel submits that it is a serious offence and, these days, such kind of cases are on rise. He, thus, prays that the petitioner is not entitled to the grant of bail.

I have heard the rival contentions of both the parties.

A perusal of the judgments passed by this Court as well as other High Courts would show that only if the recovery of the contraband concerned is 'greater than' that which has been specified in the Table (supra), the recovery becomes that of commercial quantity.

Admittedly, the recovery in the present case is of 01 kg charas including the weight of the bag. A perusal of Section 2(vii-a) read with the Schedule/Table and Section 37 of the NDPS Act would show that the bar under Section 37 NDPS Act to the grant of bail would be in a case of commercial quantity only.

In the present case, the recovery being 01 kg of charas, admittedly is a border-line case but nevertheless falls within the non-commercial quantity and the commercial quantity would be anything in

excess of 01 killo of charas. Undoubtedly, the petitioner is not an accused in another case.

Therefore, without commenting upon the merits of the case, keeping in view the fact that the trial is not likely to be concluded in the near future, the present petition is allowed and petitioner-Rafeek is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Panipat.

It is further made clear that if petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

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

07.03.2022

JITESH

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(JASJIT SINGH BEDI)

JUDGE