

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-6598-2022

Date of Decision:-23.03.2022

Rai Chand @ Raj Chand Kumar.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Prateek Pandit, Advocate for the Petitioner.

Mr. Sidakmeet Singh Sandhu, Assistant Advocate General,
Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.200 dated 21.12.2021 under Sections 20 of the NDPS Act, 1985 registered at Police Station Kartarpur, District Jalandhar (Rural).

The allegations against the petitioner are that he was arrested and from his possession 1.5 Kgs of Ganja was recovered.

The Counsel for the petitioner submits that the commercial quantity of Ganja starts from 20Kg. In the present case, the recovery is marginally above the small quantity and much less than the commercial quantity. He further submits that the mandatory provision of Section 50, 52-A and 57 of the NDPS Act have not been complied with thereby

vitiating the entire search and seizure. He submits that the details of the FIR are contained in the recovery memo and other documents prepared at the spot which precede the FIR which raises doubts about the prosecution case regarding the recovery. With reference to the trial in FIR No.50 dated 18.03.2018, the counsel states that the petitioner was sentenced to the period already undergone vide judgment dated 08.10.2021 (Annexure P-2). He thus contends that the recovery being of non commercial quantity, the petitioner deserves the concession of regular bail.

The learned Counsel for the State on the other hand submits that being a prior convict the petitioner does not deserve the concession of regular bail. He however admits the factum of the recovery in each case being less than the commercial quantity.

I have heard learned Counsel for both the parties at length.

Admittedly, the recovery in the present case is of 1.5Kgs of Ganja, which is marginally above the small quantity of 1Kg and much below the commercial quantity of 20Kg. Thus the recovery effected is of a non commercial quantity. Even in the earlier FIR No.50 in which the petitioner stands convicted the recovery of 5Kgs of Ganja which was less than the commercial quantity.

Thus keeping in view the quantity of contraband recovered and the fact that the petitioner is in custody since 21.12.2021, the further incarceration of the petitioner is not required.

In this view of the matter, without commenting upon the merits of the case, keeping in view the custody period and the fact that the trial is not likely to be concluded in near future, the present petition is allowed and the petitioner **Rai Chand @ Raj Chand Kumar** son of Sh. Ram Pal

Mandal @ Ram Phal Mandal is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Jalandhar.

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

The petitioner shall mark his presence at Police Station Kartarpur, District Jalandhar (Rural) on the first Monday of every month till the conclusion of the trial.

(JASJIT SINGH BEDI)
JUDGE

March 23, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>