

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

213

**CRM-M-22042-2022
Decided on :01.06.2022**

Vikas Kumar @ Vicky Wagel

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Nitin Narula, Advocate and
Mr. Sandeep Sharma, Advocate,
for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (Oral)

This is the 2nd petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.0138 dated 22.12.2021 registered under Sections 20 of NDPS Act at Police Station D-Division, District Amritsar.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been in custody since 22.12.2021; the challan has been presented; and out of 11 witnesses, none have been examined and thus, the trial is likely to take time to conclude. It is further submitted that the petitioner is not involved in any other case and as per the FIR, the alleged recovery effected from the petitioner is of 'Charas' which when weighed along with the plastic polythene bag,

weighed 1 Kg. It is further submitted that even in case the weight of the alleged contraband '*Charas*' is taken to be 1 Kg, then also, the same would be of non-commercial quantity and for the said purpose, he has relied upon the definition of commercial quantity as contained in Section 2 sub-Section (vii-a) of the NDPS Act, 1985. The said definition along with Entry No.23 of the table would show that the quantity higher than 1 Kg, would constitute as commercial quantity. Learned counsel for the petitioner has relied upon order dated 23.03.2022 passed by a Coordinate Bench of this Court in **CRM-M-50823-2021** titled '*Satar Ali Vs. State of Haryana*' and on order dated 30.09.2021 passed by another Coordinate Bench of this Court in **CRM-M-40382-2021** titled '*Malkit Singh vs. U.T. Chandigarh*'.

Learned State counsel, on the other hand, opposed the present petition for regular bail.

This Court has heard the learned counsel for the parties and has perused the paperbook.

Section 2 (vii-a) of the NDPS Act is reproduced 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;”

A perusal of the above definition of commercial quantity would show that in relation to Narcotic Drugs and Psychotropic

Substances, any quantity which is ‘greater’ than the quantity specified by the Central Government by notification in the official gazette would fall within the definition of commercial quantity. A perusal of the table which enumerates various narcotic drugs and psychotropic substances and also specifies the quantity on account of which either the drug would be less than small quantity or between small quantity and commercial quantity or commercial quantity have been mentioned. Serial No.23 deals with the Entry relateable to *cannabis*, *charas* and *Hashish* and in respect of the same, in the last column the quantity stated to be is ‘1 Kg’. The relevant portion of the chart/table is reproduced hereinbelow:-

“Notification specifying small quantity and Commercial Quantity.

In exercise of the powers conferred by clauses (viia) and (xxiia) 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)

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

A conjoint reading of Section 2 (vii-a) and the table would show that the quantity more than 1 Kg would be commercial quantity. Even as per the prosecution case, the ‘Charas’ which was recovered, when weighed along with the plastic polythene bag, weighed 1 Kg. Thus, even if the fact that the plastic bag also carries some weight is not taken into account then, also the quantity recovered would be of non-commercial quantity and thus, the rigors of Section 37 of the NDPS Act would not be attracted in the present case. The petitioner has been in custody since 22.12.2021 and there are 11 witnesses, none has been examined. The petitioner is stated to be not involved in any other case. The petitioner had earlier filed a regular bail application which was withdrawn on 28.04.2022 with liberty to file a fresh petition after going

through the report under Section 173 Cr.P.C. The said report under Section 173 Cr.P.C. has already been submitted and the counsel has, after going through the said report, raised the above said arguments.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

01.06.2022

geeta

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No