

CRM-M-27009-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27009-2022
Reserved on: 02.08.2022
Pronounced on: 15.09.2022

Pardeep ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. H.N. Sahu, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
148	02.03.2022	City Rohtak, Distt. Rohtak, Haryana	29(b)(ii)C of NDPS Act (Section 27A, 29 of NDPS Act and Section 201 IPC added later on)

1. The petitioner, incarcerated upon his arrest for possessing a commercial quantity of Ganja, in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has come up before this Court under Section 439 of CrPC, seeking bail.
2. In paragraph 18 of the bail petition, the accused declares that he has no criminal antecedents.
3. On 2nd Mar 2022, the police had recovered 32 kg ganja from Sanjay, who was arrested and during interrogation disclosed the petitioner as its seller.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
5. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

REASONING:

6. The substance involved in the present case is Ganja, and weighs 32 kgs. Entry no. 55 of the table specifying small and commercial quantities specifies the quantity greater than 20 kg as commercial quantity and lesser than 1000 gram as small. Thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of

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the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. The petitioner had sold 32 kgs of Ganja to Sanjay, from whom the police recovered it on 2-3-2022. In para 8 of the reply, the prosecution mentions the exchange of calls between the petitioner and the said Sanjay, and details of such calls with the sellers to the petitioner are also mentioned. A perusal of the bail petition no-where explains the reasons for such calls. Thus, the petitioner has failed to discharge the burden, that the State has placed upon him under section 37 of NDPS Act.

8. Regarding the bail on parity with the co-accused Satish, who was granted bail vide order dated 12-5-2022 in CRM-M-15506-22 is concerned, the facts are entirely different. The accused, Sanjay, from whose possession the police had recovered 32 kg ganja, had disclosed to the police that he had earlier sold two quintals of ganja to the petitioner, but such ganja was never recovered. The evidence against the petitioner is the exchange of calls at the time, which is proximate to the recovery. Thus, the petitioner and the similarly placed accused would not be entitled to bail on parity with Satish.

9. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

15.09.2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.