

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of decision : 11.7.2022

CRM-M-27034-2020 (O/M)

|                 |        |                      |
|-----------------|--------|----------------------|
| Sagar           | Versus | ..... Petitioner (s) |
| State of Punjab |        | ..... Respondent (s) |

CRM-M-43842-2020 (O/M)

|                 |        |                      |
|-----------------|--------|----------------------|
| Buta Singh      | Versus | ..... Petitioner (s) |
| State of Punjab |        | ..... Respondent (s) |

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Charanpreet Singh, Advocate  
for petitioners.

Mr. B.S. Sewak, Additional A.G. Punjab.

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HARINDER SINGH SIDHU, J.

This order will dispose of abovementioned petitions as the facts of both cases are identical. For brevity, facts have been taken from CRM-M-43842-2020.

These petitions are filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No. 48, dated 17.2.2019 registered under Section 20 NDPS Act at Police Station City Khanna, District Ludhiana.

As per allegations in FIR, 7.5 kilogram of Charas was recovered from petitioner.

Mr. Charanpreet Singh, learned counsel for petitioner has referred to FSL report which is reproduced as under :-

' The content of the parcel under reference has been analyzed by chemical. TLC and instrumental analysis. On the basis of analysis, presence of Tetrahydrocannabinol and other cannabinoids, Cystolythic hair and 19.85% of resin extract. Charas has been found present in the content of the parcel.'

As per this FSL report, the contraband was found to be containing Tetrahydrocannabinol and other cannabinoids, Cystolytic hair and 19.85% of resin extract.

Learned counsel for petitioner has relied on order dated 28.5.2018 passed by Hon'ble Division Bench of this Court in CRM-22440-2014 in CRA-D-163-DB-2017 titled as Varinder Kumar Versus State of Punjab wherein it was observed as under :-

“ For the purpose of Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') which provides punishment for contravention in relation to cannabis plant and cannabis and the definition of cannabis and cannabis plant under Section 2 (iii) (a) (b) (c) and Section 2 (iv) of NDPS Act defining cannabis plant, we have taken into consideration the fact that any quantity above 1 kg containing Tetrahydrocannabinol would be 'Charas'. Any quantity above 20 kgs containing Tetrahydrocannabinol would be 'Ganja' whereas for 'Bhang', there is no commercial quantity prescribed.

Counsel for the applicant appellant has referred to Parikh's Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology as discussed in the judgment Nagender Shah Versus State of H.P. by a Division Bench of Himachal Pradesh High Court reported as 201 (4) RCR (Criminal) 194 to clarify that in case of 'Bhang', Tetrahydrocannabinol in the sample stuff would be 15% and in the case of 'Ganja', it would be 25% and in case of 'Charas', it would be between 25 to 40%.”

In view thereof, it is submitted that contraband recovered from petitioners would be Ganja and not Charas.

Admittedly, only quantity above 20 kg. of Ganja is commercial quantity. Here, the recovery from petitioners is 7.5 kg which would be non commercial.

Petitioners are in custody since 17.2.2019 (3 years 4 months). There are no other NDPS cases pending against petitioners.

Considering the aforesaid facts and circumstances, no useful purpose would be served by keeping the petitioners behind bars. Hence, petitions are allowed. Petitioners Sagar in CRM-M-27034-2020 and Buta Singh in CRM-M-43842-2020 are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate concerned.

(HARINDER SINGH SIDHU)  
JUDGE

11.7.2022  
sjks

Whether reasoned order : Yes / No

Whether reportable : Yes / No