

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

CRM-M-28943-2022
Date of Decision: 17.10.2022

Pawan Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ajay Pal Singh Rehan, Advocate, for the petitioner.
Mr. Joginder Pal Ratra, Sr. DAG, Punjab.

HARNARESH SINGH GILL, J.

The petitioner seeks grant of anticipatory bail in case bearing FIR No. 214 dated 24.10.2021 under Section 20 of the NDPS Act, 1985, registered at Police Station Mukerian, District Hoshiarpur.

Learned counsel for the petitioner contends that the complainant in the present case is SI Sher Jaspal Singh; that he had conducted the personal search of the petitioner and has also conducted investigation on the spot, without following the procedure laid down under Section 50 of the NDPS Act.

It is further submitted that the recovery, as per the report dated 17.01.2022 submitted by the Forensic Science Laboratory, is of Tetrahydrocannabinol and other Cannabinoids, Cystolithic hair and 25.40% resin extract in the parcel and charas had been found in the contents of the parcel. It is further submitted that while dismissing the anticipatory bail application of the petitioner, the Judge Special Court, Hoshiarpur, has not taken into consideration that the alleged recovery made from the petitioner does not fall within the

ambit of commercial quantity and the rigours of Section 37 of the NDPS Act, are not attracted. Learned counsel for the petitioner relies upon the judgment rendered by the Himachal Pradesh High Court in Nagender Shah Vs. State of H.P., 2010(4) RCR (Criminal) 194.

On the other hand, learned State counsel submits that as per the Chemical Examiner's Report, the alleged intoxicant substance was found containing salt "Tetrahydrocannabinol and other Cannabinoids and that 58 grams of intoxicant substance was recovered from the petitioner and possession of more than 50 gms substance containing above said salt, falls under the commercial quantity and that in view of the rigours of Section 37 of the NDPS Act, the petitioner is not entitled to the concession of anticipatory bail.

It is further submitted that the report of the expert cannot be said to be without probative value because the statute does not provide that the report must contain the entire procedure adopted by the expert while drawing such conclusion and opinion of the expert is advisory in nature. Chemical Examiner is not under any legal obligation to state the percentage of Tetrahydrocannabinol and other Cannabinoids. In support of his arguments, the learned State Counsel relies upon the judgment of the Full Bench of the Himachal Pradesh High Court in State of U.P. Vs. Mehboob Khan, 2014(2) RCR (Criminal) 447 and a Division Bench judgment of Delhi High Court in Dilip Vs. State, 2010(7) RCR (Criminal) 1448.

I have heard the arguments raised by the learned counsel for the petitioner and the learned counsel for the respondent-State.

While dismissing the anticipatory bail application of the petitioner, learned Judge, Special Court, Hoshiarpur, has taken into consideration notification No. SO.1055.E dated 19.10.2001 and that the salt Tetrahydrocannabinol and other Cannabinoids, falls under Sr. No. 150 of the list contained in the said notification. Thus, 50 grams or more of aforesaid substance, falls under the commercial quantity and rigours of Section 37 of the NDPS Act, are attracted. Hon'ble Apex Court in State of Haryana Vs. Vs. Samarth Kumar, Criminal Appeal No. 1005 of 2002 decided on 20.07.2002 has held that advantage of the decision in Tofan Singh Vs. State of Tamil Nadu, (2021)4 SCC page 1, may be taken at the time of arguing the regular bail application or at the time of final hearing, after conclusion of the trial.

Test of narcotic drugs conducted by the expert cannot be said to be without any probative value because the Statue does not provide that the report must contain the entire procedure adopted by the expert and the report is only advisory in nature.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

17.10.2022
ds

(HARNARESH SINGH GILL)
JUDGE

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