

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

(237)

CRM-M-36774-2022

Date of Decision: 25.08.2022

Adil

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kamal Chaudhary, Advocate, for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a first petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.06, dated 11.01.2022 under Section 20 (b) of NDPS Act, 1985 registered at Police Station GRP Faridabad, District GRP Ambala Cantt.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 11.01.2022 and challan in the present case has been presented and there are total 11 witnesses, out of which, none have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that as per the prosecution version, the present petitioner, along with one Vishnu, was jointly holding one heavy plastic bag inasmuch as the petitioner was holding it from his left hand and whereas Vishnu was holding it from his right hand and from the said bag, recovery of 10 kg. Ganja had been effected, which is a non-commercial

quantity. It is further submitted that as per the prosecution case, two more persons namely, Salim and Mukesh were also walking on the stairs and were also jointly holding another plastic bag, the right side of which was held by accused Salim and other side by Mukesh from his left hand and from the said bag, recovery of 10 kg. Ganja had been effected. It is submitted that since all the four accused were walking thus, the principle of joint recovery would not apply in the present case. It is submitted that even in case the principle of joint recovery is to be applied, then also, the quantity i.e. 20 kg. Ganja does not fall in commercial quantity inasmuch as, as per the settled law, it is only if the quantity is more than 20 kg., that the same would fall within the ambit of commercial quantity. It is submitted that even the weight of the plastic bags, which were stated to be 'heavy plastic bags', had to be excluded and thus, seeing it from any which way the alleged recovery from the petitioner would not fall within the category of commercial quantity.

On the other hand, learned State counsel has opposed the present application for the grant of regular bail to the petitioner and on instructions from SI Rajpal he has submitted that in the present case all the four accused were walking together and the petitioner and Vishnu were jointly holding one bag whereas Salim and Mukesh were jointly holding the other bag and recovery from each bag is 10 kg. Ganja and the said recovery should be considered as a joint recovery. The other facts have not been disputed by the learned State counsel.

This Court has heard the learned counsel for the parties and has perused the paper-book.

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. The relevant portion of the chart/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, is reproduced hereinbelow:

"Notification specifying small quantity and Commercial Quantity

In exercise of the powers conferred by clauses (vii-a) and (xxiii-a) 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)

<i>Sr. No.</i>	<i>Name of Narcotic Drug and Psychotropic Substances (International non-proprietary name (INN))</i>	<i>Other non proprietary name</i>	<i>Chemical name quantity (in gm.)</i>	<i>Small</i>	<i>Commercial Quantity (in gm./kg.)</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>55</i>	<i>Ganja</i>			<i>1000 gm.</i>	<i>20 kg.</i>
<i>X</i>	<i>X</i>	<i>X</i>	<i>X</i>	<i>X</i>	<i>X</i>

A conjoint reading of Section 2 (vii-a) and the table would show

that the quantity more than 20 kg. of Ganja would be considered to be commercial quantity.

In the present case, all the four persons were alleged to be walking. The petitioner and Vishnu were stated to be jointly holding one plastic bag from which 10 kg. Ganja had been recovered. The co-accused Salim and Mukesh were also holding another plastic bag from which the recovery of 10 kg. Ganja had been effected. It would be a matter of debate as to whether the recovery is to be seen jointly and considered on aggregate basis or the recovery is to be seen separately i.e. in pairs, of the petitioner and Vishnu and that of co-accused Salim and Mukesh i.e. 10 kg. each. Even in case the entire recovery is to be taken jointly, as an aggregate recovery, then also the said recovery is 20 kg. of Ganja, which would also prima facie not fall within the ambit of commercial quantity, as it is only in case the quantity is more than what is stipulated in the table i.e. 20 kg., that the same would fall within the ambit of commercial quantity. Moreover, said 20 kg is the weight of the recovery, including the weight of the bags. Thus, the bar under Section 37 of the NDPS Act would not apply in the present case. The petitioner is in custody since 11.01.2022 and challan in the present case has been presented and there are total 11 witnesses, out of which, none have been examined and thus, the trial is likely to take time and the petitioner is not involved in any other case.

Keeping in view the abovesaid 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.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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

August 25, 2022
naresh.k

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes