

CRM-M-42499-2021 (O&M)

Through video conference
230

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

CRM-M-42499-2021 (O&M).
Decided on: January 19, 2022.

Ramesh Kumar

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

PRESENT Mr.K.D.S. Hooda, Advocate,
for the petitioner.

Mr.Ranvir Singh Arya, Addl. A.G. Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.88 dated 20.2.2021, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (Section 29/61/85 of the NDPS Act added later on) registered at Police Station Narnaund, District Hisar.

Learned counsel for the petitioner has submitted that the petitioner has not been named in the FIR and the present case has been planted upon the petitioner especially in view of the fact that the petitioner

CRM-M-42499-2021 (O&M)

was only running a dhaba in the vicinity and was not connected with the present case. He submitted that recovery of alleged quantity of ganja was made from the kotha and the petitioner could not be connected with the aforesaid recovery. He submitted that as per the allegations contained in the FIR an information was received and on the basis of said information made by one of the cultivators of the land that some bag was found in their kotha, when police party reached there, it recovered 325 kgs and 800 grams of ganja and the FIR was lodged on 20.2.2021 and the petitioner was arrested on 22.2.2021. He has further submitted that thereafter on the basis of disclosure statement made by the petitioner, as per the case of the prosecution, various other accused were nominated and so far as the present petitioner is concerned, there is nothing in evidence to show that the petitioner was involved in the present offence. Learned counsel for the petitioner has further submitted that other co-accused namely Sunil @ Sona, Sanjay @ Bablu and Jaibir @ Magga, have been granted bail by this Court vide Annexures P-3, P-4 and P-5 respectively.

On the other hand, Mr.Ranvir Singh Arya, Addl. A.G. Haryana, has submitted that a detailed status report way of affidavit of the Deputy Superintendent of Police, Narnaund, Police District Hansi, Hisar, on behalf of the State has been filed. While referring to the status report, learned State counsel has submitted that it is a case where on the basis of secret information, the police arrested the petitioner on 22.2.2021 and Section 29 of the Evidence Act, was added. Learned State Counsel further

CRM-M-42499-2021 (O&M)

submitted that thereafter when the petitioner was interrogated, he disclosed that Jaibir @ Magga son of Satpal, resident of village Samain, District Fatehabad and Sanju @ Chotu Bagri, resident of village Budhakhera, hid the packets in the fields of Kuldeep son of Nihal Singh resident of village Lohari Ragho. In pursuance of the disclosure statement made by petitioner, an amount of Rs.7,000/- was recovered from the petitioner. The petitioner dealt with accused Jaibir @ Magga and Sanjay @ Chota Bagri for telling them place of hiding the contraband in pursuance of which accused Jaibir Magga and Sanjay @ Chota Bagri gave an amount of Rs.20,000/- to petitioner and out of the said amount an amount of Rs.7,000/- was recovered by the investigating agency. While referring to the status report, learned State counsel has further submitted that on 24.2.2021 petitioner again made disclosure statement in pursuance of which he got recovered packets which were kept in 10 bags from the fields of one Inder Singh son of Gyani Ram resident of village Masudpur, which were taken on sharing basis by his cousin brother Suresh @ Nanha son of Mahender Singh resident of village Masudpur and on weighing said packets, it was found that the total Ganja Patti was 393 Kgs. 300 gms. and all the packets were sealed with seal of SS and the same was also sealed with seal of DSP. Thereafter, Sanjay @ Chota Bagri as well as Jaibir @ Magga were arrested and Jaibir @ Magga made the disclosure statement that he along with Sanjay @ Bablu made conspiracy that they will hide the contraband in the fields of Kuldeep.

Learned State counsel further submitted that in the

CRM-M-42499-2021 (O&M)

present case the main accused is the petitioner and he was arrested on 22.2.2021 and he made his disclosure statement on 23.2.2021 in which he specifically named accused Jaibir @ Maggo and Sanjay @ Chota Bagri and Sanjay @ Bablu and in pursuance of his disclosure statement Ganja weighing 393 Kgs. 300 grams was recovered which is 15 times more than the minimum threshold for commercial quantity and this fact makes the instant case distinguishable from the case of other co-accused and therefore, the petitioner cannot claim parity with other co-accused.

I have heard the learned counsel for the parties.

In the present case, the main argument raised by the learned counsel for the petitioner was two fold. Firstly, that the petitioner was running a dhaba in the vicinity of the village and that was the only reason as to why he was apprehended by the police and secondly, the other co-accused have been granted regular bail by this Court vide Annexures P-3 to P-5 and since the petitioner is claimed to be on parity with other co-accused, he may also be granted the concession of regular bail.

So far as the first submission made by the learned counsel for the petitioner is concerned, the same cannot become a foundation for the grant of bail to the petitioner since the recovered quantity was very high and the same was made in two parts. First recovery was of 325 kgs. and 800 grams of ganja and thereafter, when the petitioner was arrested, it was on his disclosure statement suffered under Section 27 of the Evidence Act, another recovery of 393 kgs. and 300 grams of ganja was

CRM-M-42499-2021 (O&M)

made from the fields of Inder Singh which was taken on sharing basis by Suresh @ Nanha. The FIR was registered on 20.2.2021 and the petitioner was arrested on 22.2.2021 and thereafter, on the basis of his disclosure statement other co-accused were arrested. The other co-accused have been granted bail on the ground that their names were nominated on the basis of disclosure statement which was per se not admissible in evidence unless there was other sufficient evidence to connect the accused with the offence other than the disclosure statement. However, the present petitioner is the main accused who was arrested and on the basis of his disclosure statement, other co-accused were arrested and therefore, it cannot be said that the petitioner is at parity with the co-accused who have been granted regular bail. Under these circumstances, this Court has to consider the effect of Section 37 of the NDPS Act. The total recovery was 325 kgs. 800 grams and 393 kgs. and 300 grams which is approximately more than 7 quintals of Ganja and is much higher than the prescribed commercial quantity under the NDPS Act and therefore, ex facie, the bar contained under Section 37 of the NDPS Act would be attracted especially in view of the fact that out of aforesaid total quantity, 393 kgs. 300 grams of ganja was recovered on the basis of disclosure statement made by the petitioner himself and otherwise also, there is no ground available with the petitioner to seek departure from the bar contained under Section 37 of the NDPS Act.

Consequently, there is no merit in the present petition and the same is hereby dismissed.

CRM-M-42499-2021 (O&M)

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

January 19, 2022.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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