

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43766-2021

DATE OF DECISION: MAY 5, 2022

MOHAMMAD SAIF

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. CHARANPREET SINGH, ADVOCATE FOR THE PETITIONER.
MR. RAMANDEEP SINGH SANDHU, SR.DAG, PUNJAB.

MANOJ BAJAJ, J.(ORAL)

Petitioner has filed this petition under Section 439 Cr.P.C. for grant of regular bail pending trial in case FIR No.159 dated 5.10.2020, under Section 20/25 NDPS Act, (Section 29 NDPS Act, added later on), Police Station Khanna City-2, District, Ludhiana, who is in custody since his arrest on 5.10.2020.

As per the allegations, on 5.10.2020, when ASI Jagjeevan Ram alongwith other police officials was present at a nakabandi in front of Princetone Mall, Khanna Delhi-Ludhiana Highway. During checking, one White colour Swift Dzire Car bearing No.DL-8CAJ-1601 coming from Mandi Gobindgarh side was stopped. The driver of the car disclosed his identity as Mohammad Saif and co-occupant disclosed his name as Mohammad Aslam. On suspicion, the car was searched and from its boot, 48 kgs. of Ganja was recovered. On these broad allegations, the present FIR was registered.

Learned counsel for the petitioner has argued that as per

prosecution the petitioner alongwith his co-accused was carrying 48 kgs. of Ganja in the vehicle driven by him and was arrested for the alleged commission of offence punishable under Section 20/25/29 NDPS Act. He has drawn the attention of the Court to the order dated 30.7.2021, passed by this Court and submitted that his co-accused Mohammad Aslam has already been released on regular bail. Therefore, the petitioner also deserves the similar concession. He has further drawn the attention of the Court to the FSL report dated 27.11.2020 (Annexure P-1) and submitted that as per the analysis of the sample, 18.05% resin extract, Ganja was found and considering the same, it would be debatable if the said contraband would fall under offence punishable under Section 20/25/29 NDPS Act. He prays for bail.

On the other hand, learned State counsel assisted by ASI Sukhdev has opposed the aforesaid prayer on the ground that the petitioner being the driver of the vehicle wherein the said contraband was being carried was well aware of it and therefore, his conscious possession is established. He has argued that the case of the co-accused is distinguishable who was travelling in the vehicle of the petitioner and the contraband was contained in the boot of the said vehicle. According to him the recovered quantity falls under the category defined under the NDPS Act, therefore, the petition be dismissed.

After hearing learned counsel and considering the above background, this Court finds that as per FSL report, 250 gms. of greenish brown coloured flowering tops dried alongwith seeds was sent for analysis and as per the report, the presence of Tetrahydrocannabinol and other

cannabinoids, Cystolythis hair and 18.05% resin extract, Ganja was found present in the content of parcel. The argument that considering the percentage mentioned in the said report, the alleged commission of offence under the NDPS Act would be debatable is not worth acceptance at this stage, as admittedly the this issue can be effectively decided only during trial. Concededly, the charges against the petitioner have already been framed and the said order was never challenged by the accused. Therefore, considering the nature and quantity of recovered contraband, no case is made out for grant of bail.

Dismissed.

May 5, 2022
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No