

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48167-2021
Reserved on 07.12.2021
Pronounced on : 14.01.2022

Giniya
...Petitioner
Versus
State of Haryana
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Dinesh Maurya, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0103	06.08.2021	Jakhal, District Fatehabad	20(c) NDPS Act and 27-A/29 NDPS Act (added later on)

1. The petitioner, incarcerated upon his arrest for possessing commercial quantity of *Ganja* in violation of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), has come up before this Court under Section 439 of CrPC, seeking bail.
2. In Para 13 of the bail application, the petitioner declares no criminal history.
3. A brief narration of allegations relevant in deciding the present petition is that on 06.08.2021, the police party, to detect and stop the drug menace, was patrolling in the official vehicle. Apart from the investigating team, the vehicle carried a laptop and a printer. When the police party was proceeding towards Jakhal, they noticed one young boy carrying a plastic bag. On seeing the police, he started going towards fields. The investigator got suspicious that this person might be carrying some contraband. Consequently, he, along with his team

members, caught the boy. On inquiry, he revealed his name as Dhani Ram, resident of Hisar. The investigator told him that he wanted to conduct his search and bag, as he was apprehensive about drugs. Subsequently, the investigator apprised him of his legal rights under Section 50 NDPS Act and searched. During the search, the police recovered 23 kg. and 700 grams of *Ganja* from the bag of Dhani Ram. After conducting the procedural requirements under the NDPS Act and CrPC, the police arrested Dhani Ram. During further investigation, the police came to know about the involvement of the petitioner-Ginia in the said offence and arrested him.

4. Learned counsel for the petitioner has argued that the petitioner-accused was arrested based on the disclosure statement of the co-accused, which is legally not admissible and hit by Section 25 of the Indian Evidence Act, 1872. He has placed reliance on a judgment passed by a coordinate Bench of this Court dated 16.07.2021 in the case of Daljit Singh Vs. State of Haryana, CRM-M-12997-2020 and seeks parity.

5. Learned State counsel has opposed the bail because the only evidence against the petitioner is not the disclosure statement, but the frequent calls exchanged between the main accused, Dhani Ram and the petitioner Ginia. He has referred to paragraph 8 of the reply by way of affidavit of D.S.P., Tohana, on behalf of the State to support his arguments.

REASONING:

6. The quantity of *Ganja* allegedly recovered from the petitioner is 23 kilograms and 700 grams, which falls in the category of commercial quantity, as per Entry 55 of the Table appended to the NDPS Act. The petitioner has not stated anything to discharge the rigours of Section 37 of the NDPS Act. The stand that the accused has been in custody for more than four months is also not a legal ground to overcome the rigours of S. 37 of the NDPS Act. A perusal of the bail petition reveals that in paragraph 3 of the petition, the explanation offered is that the petitioner was roped in due to ulterior motives. In paragraph 8, it has been mentioned that he was made a scapegoat on the bald statement of co-accused. These grounds do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. Thus, the petitioner has failed to explain under which circumstances and for what reason the phone calls were exchanged between him and the co-accused.

7. After recovery of the alleged contraband from the main accused, Dhani Ram, which falls in the category of commercial quantity, the police found the involvement of the petitioner based on the initial disclosure statement of Dhani Ram and subsequently, also from the exchange of phone calls between the main accused Dhani Ram and the petitioner Ginia. At this stage, the Court is not considering the evidence collected through the disclosure statement of the main accused and would confine itself only to the evidence collected through call details. The perusal of the reply does reveal that the calls were exchanged between the main accused and the petitioner. In the present case, since the alleged quantity of the contraband recovered from the main accused falls in commercial quantity, the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

8. A perusal of the judgment relied upon by learned counsel for the petitioner in the case of Daljit Singh Vs. State of Haryana (*supra*) reveals that the Court has granted bail to the petitioner therein only because of the case projected before the Hon'ble Court. The only evidence *qua* the petitioner in the said case was disclosure statement. However, in the present case, as already discussed, this Court is not considering this aspect at this stage and has solely relied upon the call details between the petitioner and the co-accused. Thus, the aforesaid judgment is not applicable to the present case.

9. Given above, the petitioner fails to make out a case for bail.

10. Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

January 14, 2022
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No