

255 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46114-2022

Date of Decision: October 14, 2022

Major Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. S.S. Gill, Advocate for the petitioners.

Mr. Saurabh Girdhar, AAG, Haryana.

AMAN CHAUDHARY, J.(Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.544, dated 15.07.2022, under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'the NDPS Act'), registered at Police Station Old Industrial Area, Panipat, District Panipat.

Learned counsel for the petitioner submits that the contraband recovered from the petitioner is 4 Kg., 590 grams of *ganja* 'Leafs' were recovered from the plastic bag carried by the petitioner, which he submits is non-commercial as per the schedule in the NDPS Act. He further submits that challan has been presented against him and he has been in custody for the last three months. He has been falsely implicated in the present case by the police officials due to ulterior motive. He further submits that there is non-compliance of Section 42 of the NDPS Act, as the police party received secret information but the

same was not forwarded to the senior officers immediately from the spot. He also submits that Section 37 of the NDPS Act is not attracted as the recovery falls under the non-commercial quantity. He further submits that the charges are yet to be framed and there are 18 witnesses.

Per contra, learned State counsel opposes the petition on the ground that nine more cases had been registered against the petitioner, four cases under the Excise Act, three cases under the NDPS Act and two cases under the IPC and the petitioner was apprehended at the spot. He, however does not controvert the fact that the recovery effected is non-commercial quantity; the challan has since been presented, however charges are yet to be framed; there are 18 witnesses in all; he is in custody for the last three months.

In rebuttal, learned counsel for the petitioner submits that out of the aforesaid 9 cases, petitioner stands acquitted in 8 cases and in one case he has been sentenced to pay a fine of Rs.3,000/-, the contraband involved therein being of small quantity.

I have heard learned counsel for the parties.

As regards to grant of regular bail in non-commercial quantity, a co-ordinate Bench of this Court in case of ***“Adil vs State of Haryana”*** (in CRM-M-36774-2022, decided on 25.08.2022) held as under:-

“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 facts and circumstances of the case and the aforesaid judgment of a co-ordinate Bench of this Court, in particular, the recovery effected in this case being non-commercial; out of 9 cases registered against the petitioner, he has been acquitted in 8 cases and in the 9th case he has been sentenced to pay fine only; the petitioner is in custody for last three months; challan has been presented but charges have not been framed; his further detention behind bars would not serve any useful purpose, the present petition for grant of regular bail deserves to be allowed.

Accordingly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to their not being required in any other case. The petitioners shall abide by the following conditions:-

- “1. The petitioner will not tamper with the evidence during the trial.*
- 2. The petitioner will not pressurize/ intimidate the prosecution witnesses.*
- 3. The petitioners will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.*
- 4. The petitioner shall not commit an offence similar to the offence of which, he is accused, or for commission of which he is suspected of.*
- 5. The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade their from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.*
- 6. The petitioner shall not in any manner misuse his liberty.*
- 7. Any infraction shall entail in withdrawal of the benefit granted by this Court.”*

In view of the above, this Court makes it clear that the observations made herein above are limited for the purposes of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

October 14, 2022
sarita

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