

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36775-2022
Reserved on: 16.01.2023
Pronounced on: 14.02.2023

Mohar Singh and another ...Petitioners

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Ms. Malvika Singh, Advocate for the petitioners.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
111	04.03.2022	City Industrial Area Sector 29, Panipat	20 (27 & 29 added later on) of NDPS Act,1985

1. The petitioners incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations of selling 7 kg and 50 grams of charas to the main accused Krishan Kumar and Raj Singh, had come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 18 of the bail petition, the accused declare that they have no criminal antecedents.
3. The petitioners contends that the pre-trial incarceration would cause an irreversible injustice to the petitioners and family.
4. While opposing the bail, the contention on behalf of the State is that the quantity of contraband involved in the case falls in the commercial category.

REASONING:

5. The quantity alleged is 7 kg and 50 grams of charas, and the NDPS Act makes it an offence in the following terms:

Substance Name	Cannabis and cannabis resin/ Charas/ Hashish
Quantity detained (in Grams)	7050
Quantity type	Commercial

Drug Quantity in % to commercial quantity	705.00%
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Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985	
Notification No	S.O.1055(E)
dated	10/19/2001
Sr. No.	23
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Cannabis and cannabis resin
Other non-proprietary name	CHARAS, HASHISH
Chemical Name	EXTRACTS and TINCTURES OF CANNABIS
Small Quantity (in gm.)	100
Commercial Quantity (in gm.)	1000

6. Thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioners to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. On 4th March 2022, based on secret information, the police recovered 7 kgs and 50 grams of charas from the possession of Krishan Kumar and Sonu. Their interrogation revealed the involvement of one Manoj Tyagi, a bus driver, who had transported the charas. The Sessions Court granted Manoj Tyagi bail because the main accused had given him 50 grams of charas in return for transporting the bulk, and 50 grams was a small quantity. Vide order dated 14th September 2022, a co-ordinate bench of this court had granted bail to co-accused Mukesh, passed in CRM-M-41165-2022, and the petitioners also seek bail on parity with Mukesh. However, perusing the order does not mention the evidence of call details between the main accused and Mukesh, whereas the evidence against the petitioners is also of call details. Thus, the petitioners cannot claim on parity with Mukesh. The petitioners' roles are that they used to sell the charas to the main accused, and the main accused disclosed their names in their disclosure statements. After that, the police got information about the exchange of calls between them. A reference to the status report points to such calls made on 7th March 2022, i.e., before the seizure. In para 6 of the bail petition, the petitioners mention implications based on calls but do not offer any explanation to such calls. Furthermore, the petitioners are in custody for less than a year, and as such, they cannot claim on the grounds of prolonged pre-trial incarceration, given that the contraband involved is 705% of commercial quantity, i.e., seven times more than the entry-level of commercial quantity. The petitioners cannot claim bail on parity with Manoj Tyagi, against whom there were no allegations of an exchange of calls, and the evidence was disclosure

statements. Thus, the petitioners still need to satisfy the twin conditions of section 37 of the NDPS Act.

8. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. The petitioners have not stated anything to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. Thus, the petitioners have failed to make a case for bail at this stage.

9. A perusal of the bail petition and the documents attached, *prima facie* points towards the petitioners' involvement and does not make out a case for bail. Any further discussions are likely to prejudice the petitioners; this court refrains from doing so.

10. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in terms mentioned above. However, considering the custody, the trial will be expedited, and an endeavor will be made to complete the trial by April 30, 2023. In a situation the trial is still not completed by this date, and the delay is not attributable to the petitioners, then they shall be at liberty to file fresh bail petitions before the trial court, which shall consider bail afresh without being influenced by the rejection of the previous bail petitions. The expediting of the trial is subject to the condition that the petitioners shall not seek any adjournment, and if they do so, this order shall stand recalled automatically under section 362, read with 482 CrPC, without any further reference to this court. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

14.02.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.