

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(216)

2023:PHHC:150322
CRM-M-39936-2023
Date of decision:- 24.11.2023

Kuldeep @ Sulli

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.R.S.Bajwa, Advocate for the petitioner.
Mr.Ramender Singh Chauhan, AAG, Haryana.

SUVIR SEHGAL, J. (Oral)

1. This 6th petition has been filed under Section 439 Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Section
249	26.06.2020	Sector 10, Gurugram, District Gurugram	20(b) (ii) (c) of NDPS Act, 1985

2. Case of the prosecution is that FIR, Annexure P1, has been registered on the basis of secret information that Kuldeep @ Sulli (present petitioner) is indulged in selling of Ganja Patti from his rented shop. A raid was conducted and Ganja Patti weighing 112 kg was recovered from the plastic bags lying in the shop.

3. By placing reliance upon the judgments of this Court in case **Arun Kumar Azad and others** Vs. **State of Haryana and others** 2021(3) RCR (Criminal) 398 and **Saleem @ Mulla** Vs. **State of Haryana**, 2021 (3) RCR (Criminal) 407, counsel for the petitioner has contended that Ganja Patti does not fall within the definition of Cannabis (Hemp) under the NDPS Act and the petitioner cannot be made liable for any offence committed under the said Act. He submits that the petitioner has been in detention since 29.06.2020 and as the trial is nowhere near conclusion, he deserves to be enlarged on bail.

4. Opposing the petition, learned State counsel on instructions from ASI- Pawan, submits that the recovery effected from the petitioner falls with the scope of commercial quantity and bar under Section 37 of the NDPS will apply. He has filed custody certificate dated 23.11.2023 and has urged that the petitioner does not enjoy a clean past and has been convicted for five years under Section 20-B of the NDPS Act in another criminal case and he is also accused for an offence under Section 174-A IPC. As per his instructions, 13 out of 18, prosecution witnesses have been examined.

5. I have heard counsel for the parties and considered their respective submissions.

6. As to whether Ganja Patti would attract the offence under NDPS Act would remain a moot question to be determined by the trial court. The petitioner has been in custody for the last 14 months and there is little likelihood of an early conclusion of the trial. This Court is therefore satisfied that the prayer made in the petition deserves to be granted.

7. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate, concerned.

8. It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

24.11.2023
Sd

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned Yes/No
Whether Reportable Yes/No.