

CRM-M No.51010 of 2023 (O&M)

2023:PHHC:152259

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

103+208

**CRM No.50186 of 2023 in/and
CRM-M No.51010 of 2023
Date of Decision: 30.11.2023**

MOSIM

.....Petitioner

Vs

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rakesh Verma, Advocate and
Mr. Manish Verma, Advocate
for the petitioner.

Mr. Krishan K. Chahal, Addl. A.G., Haryana.

HARKESH MANUJA, J. (Oral)**CRM No.50186 of 2023**

For the reasons mentioned in the application, the same is allowed. The FSL report dated 28.07.2023 (Annexure P-3) is taken on record, subject to all just exceptions.

CRM-M No.51010 of 2023

1. By way of present petition filed under Section 439 Cr.P.C., prayer has been made for grant of regular bail to the petitioner in case FIR No.125 dated 07.03.2023, registered under Sections 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter to be referred as 'the NDPS Act') (Sections 61 & 85 of the NDPS Act added later on) at Police Station Hodal, District Palwal (Haryana).

2. Learned counsel for the petitioner submits that the petitioner has been implicated in alleged recovery of 29 kg. 600 grams of *Ganja*.
3. Opposing the prayer made in the present petition, learned State counsel submits that the petitioner was apprehended at the spot with the intoxicating material alongwith the motorcycle which was owned by his brother. He also opposes the prayer by referring to the commercial quantity recovered besides very short custody period of the petitioner.
4. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made by learned counsel for the petitioner.
5. In the present case, the alleged recovery is of 29 kg. 600 grams of *Ganja*. As per report dated 28.07.2023 received from the Regional Forensic Science Laboratory, Bhondsi Gurugram, Haryana, following description has been given qua recovery made from the petitioner:-

<i>Barcode No.</i>	<i>Parcel No.</i>	<i>No. & Seal impression</i>	<i>Description of parcel(s)/Exhibits(s)</i>
<i>FSL:56501-230313-2221430</i> <i>PS:56501-230311-145236</i>	<i>1</i>	<i>1- Five Rupee Coin</i>	<i>One sealed cloth parcel bearing barcode-56501-230313-2221430</i> <i>Sample marked here as BHN-159/2023</i> <i>Physical appearance: Greenish brown vegetative material having flowering/ fruiting tops and seeds etc.</i> <i>Weight of sample received: 100 gm</i>

From the above, it is apparent that the physical appearance of the material recovered from the petitioner is Greenish brown vegetative material

having flowering/ fruiting tops and seeds etc. and the same is yet to be ascertained/determined as to whether it is *Ganja* or *Ganja Patti*.

6. As per Section 2(iii)(b) of the NDPS Act, *Ganja Patti* i.e. leaves of *Ganja* are excluded from the definition of cannabis (hemp) and thus would not attract mischief of offence under the NDPS Act as having been observed by the Co-ordinate Bench of this Court in the case of *Saleem @ Mulla vs. State of Haryana*, reported in 2021(3) R.C.R. (Criminal) 407.

7. Moreover, the petitioner has already suffered incarceration for a period of more than 8½ months and there is no other case under NDPS Act registered against him. The investigation already stands concluded with the filing of challan and framing of charges.

8. In view of the facts and circumstances narrated above and considering the age of the petitioner, who is 24 years of age, I do not find any justification to extend the incarceration of the petitioner. Accordingly, without expressing any opinion on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the concerned Trial Court/Duty Magistrate.

November 30, 2023

Atik

Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No