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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M No.303 of 2024 (O&amp;M)

Date of decision : 11.01.2024

Ravi

..... Petitioner

versus

The State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :- Mr. Manoj Kumar Sood, Advocate  
for the petitioner.

Mr. Ashok Kumar Sehrawat, DAG, Haryana

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**PANKAJ JAIN, J. (ORAL)**

1 This petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case F.I.R. No.855 dated 09.10.2023 registered under Section 20/29 of NDPS Act at Police Station Sector 58, Faridabad.

2 As per the contents of the FIR, it has been alleged as under:-

*“The SHO, Police Station sector-58, Faridabad. Today ASI Suresh along with Head Constable Jwahar 466/FBD, Constable Vikas 3991/FBD with printer and laptop in Government Vehicle No. HR-51-GV 6546 and driver EHC Naresh 373/FBD are present near Ashiana Flats Sector 56 for patrolling and crime investigation. That informer gave the information that two persons namely Dev Dass R/o village Deghgot, Palwla and Sandeep Kumar, who are involved in the selling of contraband Ganja. They will go on their scooty No. HR 2023 TR 4282 BN of white colour from village Gaunchi Sector 56 to Rajiv Colony through Kacha path of Ashiana Flats to sell the Ganja. If the Kacha road along with Johar of the Ashiana Flats is barricaded then both of them came be caught along with contraband Ganja and Scooty. That fellow employee were informed about the informer's information and a notice/s 42 of NDPS Act was prepared and constable Vikas 3991/FBD Sector-58 Faridabad was sent to PS Sector-58 to inform the SHO. After that I, ASI along with fellow employees in the government vehicle have reached on the spot informed by informer near Kacha path of Ashiana flats. That after some time Constable Vikas*

3991/FBD reached with permission to barricade and Nakal Roznamcha Rapat No. 32 dated 9.10.2023 from Sector 58 Faridabad. That ASI along with other employees started checking of vehicles coming from both side. That after some time we saw two persons coming from Village Gonchai Sector 56, Faridabad on white Scooty toward Johad through Kacha path. That informer pointed out towards them these are same Dev Dass and Sandeep who are carrying Ganja. That both the persons try to turn back seeing the police party, then ASI with the help of other employees caught hold of both the persons along with scooty, their name and address was asked and the driver of scooty informed his name Sandeep Kumar S/o Krishan R/o Village Badshahpur Distt Gurugram and pillion rider told his name Dev Dass S/o Shiv Chandi R/o Village Deghot, District Palwal. The ASI checked the dickey of Scooty and found one packet wrapped in silo tape in one white plastic polythene. That the ASI having doubt of contraband to be Ganja told Sandeep and Dev Dass this Ganja comes under NDPS Act so you both have legal right that you can get yourself and your scooty searched in presence of some Gazetted officer and in this regard give your consent in writing. Dev Das and Sandeep both were served separate notices under Section 50 of NDPS Act and Dev Das and Sandeep after reading notice replied on the notice "I want to get searched in presence of Gazetted Officer duty magistrate on the spot only". On this ASI called from his mobile No. 9911524008 following the conditions mentioned in NDPS Act called duty magistrate Ashish Singh Excise Taxation Officer Faridabad North District Faridabad on his mobile number 8800616109 and informed him about the situation. That after some time duty magistrate Ashish Singh Excise Taxation Officer Faridabad North District Faridabad came present on the spot. He introduced himself to both the persons Dev Das and Sandeep and made inquiry from both the persons and signed the notices under Section 50 of NDPS Act. After that duty magistrate directed ASI to search both the persons Dev Das and Sandeep and Scooty HR 2023 TR 4282 BN. On the direction of the Duty Magistrate Dev Das and Sandeep and their Scooty was searched by ASI. During the search one packet wrapped in Silo tape in one white polythene was found from the dickey of the scooty. ASI torn the packet and showed to the duty magistrate and found Ganja in the packet. That both the persons Dev Das and Sandeep were asked about the packet then they also admitted confirmed that this is Ganga. After that both Dev Das and Sandeep were told to present permit or Licence to keep and sell the above Ganja then both Dev Das and Sandeep could not present permit or licence. After that on the spot the electronic weighing machine was brought and recovered ganja along with plastic packet was

*weighted and total two kilo 300 gram was found. That the recovered plastic and Ganja was packed and ASI sealed with his seal SK and seal was handed over to HC Jwahar 446/FBD after that duty magistrate also sealed the packet with his seal AK and kept the seal with him. The on checking the recovered scooty the engine Number of Scooty JF17ELNGG100144 and chassis MBLJFNO71NGG01125 was found. That the recovered Ganja packet and Scooty No. HR 2023 TR 4282 BN was taken into custody as evidence by the police. The accused and the witness signed the Farad and duty magistrate also verified the Farad. That on seeing the police party some people gathered on the spot who were requested to be independent witness but all refused and went away. That accused Dev Dass and Sandeep has committed crime by under Section 20-61-85 of NDPS Act by keeping Ganja without licence and permit in their scooty No. HR 2023 TR 4282 BN. The tehrir is sent through Constable Vikas 3991/FBC to police Station to register a case.”*

3           The contraband was recovered from Dev Dass and Sandeep who were riding the Scooty. On search 2.300 kg of *ganja patti* was recovered from the boot of the said scooty and said scooty belongs to the present petitioner.

4           Learned counsel for the petitioner submits that there is no recovery qua the petitioner who has clean antecedents and has no case registered against him under NDPS Act. So far as his nomination by the co-accused is concerned, the same alone is a weak piece of evidence in terms of law laid down in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1** and would not be sufficient to drive home guilt against him. He further submits that the challan already stands presented and thus there cannot be any apprehension that the petitioner would tamper with the evidence.

5           Learned State counsel on instructions from Investigating Officer is not in a position to dispute the aforementioned factual assertions based on record.

6 I have heard learned counsel for the parties and have gone through the records of the case.

7 Keeping in view the incarceration suffered by the petitioner and the fact that the challan already stands presented, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) *The petitioner shall not mis-use the liberty granted.*
- (ii) *The petitioner shall not tamper with any evidence oral or documentary during the trial.*
- (iii) *The petitioner shall not absent himself on any date before the trial.*
- (iv) *The petitioner shall not commit any offence while on bail.*
- (v) *The petitioner shall deposit his passport, if any with the trial Court.*
- (vi) *The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.*
- (vii) *The petitioner shall not in any manner try to delay the trial.*

8 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

( PANKAJ JAIN )  
JUDGE

11.01.2024  
Pooja sharma-I

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable :      | No  |