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

**CRM-M-4622-2025**

**DATE OF DECISION: 11.03.2025**

**MUSTKIM**

**...PETITIONER**

**Versus**

**STATE OF HARYANA**

**... RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Mohammad Arshad, Advocate for the petitioner(s).  
Mr. Narayan Har Gupta, Advocate  
Mr. Uzra Khan, Advocate  
Mr. Aaftab Hasan, Advocate for the petitioner.  
Mr. Chetan Sharma, DAG, Haryana.

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**SANDEEP MOUDGIL, J (ORAL)**

**1. Prayer**

This petition has been filed under Section 483 of The Bharatiya Nagarik Suraksha Sanhita 2023 with the prayer to grant the concession of bail to the petitioner in FIR No. 260 dated 27.05.2022 under section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Hodal District Palwal (Annexure P-1).

**2.** Prosecution story set up in the present case as per the version in the FIR reads as under :-

*‘On 27.05.2022, ASI along with ASI Omprakash 579/GGM, HC Qutabuddin 675/Palwal, Constable Amit 747, Constable Neeraj 813, in government vehicle and driver Constable Shankarlal 970, on patrolling and investigation, was present at Hasanpur Chowk, Hodal. At that moment, a secret informer came and informed that a truck number PB-11-*



*BA-5948, with a young man named Mustaqeem, son of Kallu Khan, resident of Patuka, Tehsil Tauru, District Mewat, and a Swift Dzire car number UP-85-AV-1899, grey color, in which Amar Singh, son of Heto, resident of Nahara, Tehsil Chhata, District Mathura (U.P.). were jointly involved in bringing and supplying cannabis (Ganja Patti). Today also, they would be supplying cannabis (Ganja Patti), in truck number PB-11-BA-5948, traveling from Koshi towards Punhana via Hodal. The truck would be piloted by the Swift Dzire car number UP-85-AV-1899, grey color. If Nakabandi (blockade) is set up at Ujina Drain NH-19, Hodal, truck number PB-11-BA-5948 along with the Swift car number UP-85-AV-1899 and the individuals piloting it can be apprehended. Considering the information truthful, fellow personnel were informed about it. A notice under Section 42 NDPS Act was prepared and sent through Constable Amit 747 to Hodal police station for entering in the daily diary and informing the officers. Thereafter, I, ASI, along with fellow personnel and the government vehicle, reached Ujina Drain NH-19, Hodal, and sat up Nakabandi. Shortly thereafter, a grey Swift car was seen approaching from the side of Kosikalan, U.P. I, ASI, signaled it to stop. The driver suddenly stopped the car and attempted to reverse it. L. ASL, with the help of fellow personnel, managed to apprehend the car along with the driver. Upon checking the car number, it was found to be UP-85-AV-1899, grey Swift Dzire. The car was parked aside, and HC Qutabuddin 675 was assigned to keep watch. Shorter after, a truck with number PB-11-BA-5948 was spotted approaching. I, ASI, signaled it to stop. The truck driver attempted to suddenly brake and reverse the truck. I, ASI, with the help of fellow personnel, managed to apprehend the truck along with its driver. Upon asking the driver his name and address, he identified himself as Mustaqeem, son of Kallu Khan, resident of Patuka, Tehsil Tauru, District Mewat. When the car driver was asked his name and address, he identified himself as Amar Singh, son of Heto, resident of Nahara, Tehsil Chhata, District Mathura*



(U.P.). The rear body of the truck was covered with a green tarpaulin. A smell of narcotics was emanating from the truck. I, ASI, prepared separate notices under Section 50 NDPS Act for Mustaqeem, the truck driver, and Amar Singh, the car driver, and explained the contents of the notices to both. They were also informed about their right to have their vehicle searched in the presence of a Magistrate or a Gazetted Officer, as there was suspicion of narcotic substances in the truck, can get done. The list of which has been shown to you. They can be called to the spot or taken to them. On Notice 50 NDPS Act, Mustaqeem and Amar Singh above both wrote on their respective notices in writing that they want their search to be conducted by a gazetted officer (Nodal Officer) and signed on the notice. After some time, upon receiving the information. Nodal Officer Lakhan Singh, SDO Irrigation Department, Hodal, arrived at the spot and gave Notice 42 NDPS Act to the above-mentioned individuals. As per the orders of the Nodal Officer, i, ASI, with the help of fellow personnel, opened the green tarpaulin tied on the truck and checked it. Inside the truck, bags of salt were found. After removing the salt bags from the middle of the truck, white plastic bags were seen kept inside. These were taken out and numbered serially. Upon counting, a total of 17 bags were found. Upon opening and checking these bags, all contained plastic-taped 93 packets of cannabis leaves (intoxicating substance). All 93 packets were opened and checked, and all were found to contain cannabis leaves. The cannabis leaves, wrapped in plastic tape, were taken out and placed separately into plastic bags, resulting in a total of 19 bags. All bags were numbered serially, and under the supervision of the Nodal Officer, the bags were weighed as follows: 1) 25.400 kg, 2) 20.500 kg, 3) 30.700 kg, 4) 23.500 kg, 5) 25.600 kg, 6) 20.400 kg, 7) 25.500 kg, 8) 27.600 kg, 9) 25.500 kg, 10) 25.600 kg, 11) 25.400 kg, 12) 25.500 kg, 13) 25.600 kg, 14) 20.300 kg, 15) 25.400 kg, 16) 25.700 kg, 17) 25.500 kg, 18) 25.600 kg, 19) 25.500 kg. The total weight of all 19 bags of cannabis was 474



kg and 800 grams. The empty plastic tape was placed into two separate plastic bags, and the bundle was prepared. When asked for a license or permit for the cannabis leaves from the mentioned individuals, they could not present any license or permit. Under the supervision of the Nodal Officer, all 19 bags were sealed with my seal "M.N." and the Nodal Officer's seal "H.K." The documentation was verified. The sealed materials were handed over to ASI Omprakash 579/GGM, CIA Staff Hodal, for laboratory testing. The 19 bags of cannabis, truck number PB-11-BA-5948 (12-wheeler) with 330 bags of salt, the invoice, and the green tarpaulin were seized as evidence through a seizure memo. The memo was prepared, and the accused and witnesses signed it. Afterward, under the supervision of HC Outabuddin 675, the Swift Dzire car parked separately was searched under the supervision of the Nodal Officer. No documents were found in the car. The seized car number UP-85-AV-1899, grey Swift Dzire, was separately seized as evidence through another memo. The accused and witnesses signed the memo. The accused Mustaqeem, above, committed the offense of possessing cannabis (intoxicating substance) in the truck, and Amar Singh, above, committed the offense of piloting the truck with cannabis leaves using car number UP-85-AV-1899 under Section 20-61-85 NDPS Act.'

3. **Contentions**

**On behalf of the petitioner**

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He submits that the petitioner is a driver by profession and he was unaware about the illegal contraband being transported in the truck. He further submits that co-accused Amar Singh has already been granted concession of regular bail vide order dated 15.11.2023 passed in CRM-M-25118-2023 and the petitioner is at parity with him. He



informs the Court that the petitioner has been in custody for 2 years, 9 months and 14 days, and he is not involved in any other case, meaning thereby he is not a habitual offender, therefore, prays for grant of regular bail to the petitioner.

**On behalf of the State**

Learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which, the petitioner is behind bars for 2 years and 9 month and 14 days.

Status report has been filed by way of affidavit of Kuldeep Singh, HPS Deputy Superintendent of Police, Hodal, District Palwal has on behalf of the State, the same is taken on record. Copy of the same has been furnished to the counsel opposite.

The relevant paragraphs No. 2 to 4 are reproduced below :-

*2. That after registration of the FIR, investigation was conducted by the investigating agency and also visited at the place of occurrence and prepared rough site plan and also recorded the statement of witnesses. The investigation of the present case was conducted by SI Hanish Khan of CIA Staff Hodal. During the investigation, on 27.05.2022, upon finding sufficient evidence of arrest against the accused Mustakim (petitioner) son of Kallu Khan, resident of Patuka, Tehsil Tauru, District Nuh Mewat, and Amar Singh son of Hetu, resident of Nahara, Tehsil Chhata, District Mathura (U.P.), they were formally arrested as per the legal procedure. Their arrest memos, identification documents, and personal search reports were prepared separately. The disclosure statement of the accused was recorded, and they were presented before the SHO*



*along with the case property and witnesses. After questioning the accused and witnesses, the case property was deposited in the police malkhana (evidence storage), and the accused were placed in custody after proper search. The accused, Mustakim (petitioner) and Amar Singh, were produced in court along with the case property and were granted six days of police remand.*

*3. That during the police remand, on 31.05.2022, the accused Mustakim (petitioner) and Amar Singh reached Visakhapatnam, Andhra Pradesh, and retracted their previous disclosure statements. They made a fresh disclosure statement, upon which they identified the location at Jolapur Hoollage, District Visakhapatnam, where the truck number PB-11-BA-5948 was loaded with cannabis leaves. A separate identification memo was prepared, signed by the accused and witnesses, and statements of the witnesses were recorded. As per disclosure statement of the petitioner the co-accused Shiva is supplier of the contraband. A raid was conducted at the house and known addresses of accused Shiva son of Kimdu Minnu, resident of Jolapur, District Visakhapatnam, but he was not found. The accused were produced in court on 03.06.2022 and sent to judicial custody at Neemka Jail.'*

He further submits that the quantity involved in the present case is commercial in nature, therefore prays for dismissal of the petition.

Heard learned counsel for the respective parties at length and gone through the record in hand.

#### **4. Analysis**

In light of the allegations made by the prosecution, it can be gathered that the contraband recovered i.e. 475 kg of Poppy husk (ganja leaves) is commercial in nature and the petitioner was apprehended driving the offending vehicle i.e. PB-11-BA-5948,



therefore, it is implausible to assume that the petitioner was unknowingly transporting such contraband and Section 37 puts complete bar to grant bail in such a huge quantity. In view of the fact that the petitioner was arrested in possession of a commercial quantity of contraband, he is not entitled to the concession of bail.

Furthermore, the drug is a social malady, while drug addiction eats into the vitals of the society whereas drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. The devastating effects of narcotic drugs on any person who comes to its touch are too well known. Normally, such a person ceases to be a normal human being, and is more or less reduced to zombie living animal existences and rushing fast to meet the maker. Divine qualities of an individual who consumes narcotic drugs disappear and they are the first sacrifices one normally makes while falling prey to use of drugs. Anxiety of legislature is to prevent the adverse affect of such drugs and substances on the society.

In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:



*“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

*(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”*

Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

In light of these concerns, the court, as the guardian of its citizens, deems it essential to take decisive action against such offenders, especially when the lives and futures of the nation's youth are at stake. The drug epidemic must be tackled with the utmost seriousness. The illegal activities carried out by the individuals involved must be met with resolute measures. The intent of the legislature and the integrity of the rule of law must be preserved at all costs, and cannot be allowed to be undermined, irrespective of the quantity of drugs involved.

5. Relief

In the light of above stated facts and in view of the reply filed, the court is of the considered view that the petitioner does not deserve the concession of the regular bail. Hence, the instant petition stands dismissed being devoid of merits.

However, it is made clear that the observations made herein above shall have no bearing in the mind of the trial court while adjudicating the matter in accordance with law.

Ordered accordingly.

(SANDEEP MOUDGIL)  
JUDGE

11.03.2025  
anuradha

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |