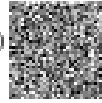


2025:PHHC:017810



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6821-2025
DECIDED ON: 06.02.2025

NAIMU @ NAIMUDDIN

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishar Sharma, Advocate
for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG Haryana

SANDEEP MOUDGIL, J (ORAL)

1. Relief sought

The jurisdiction of this Court has been invoked under Section 482 BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No.310 dated 21.08.2024 under Section 20(b)(ii)(C) of NDPS Act, 1985, registered at Police Station City Sohana, Gurugram.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“To, The SHO, Police station City Sohna, Gurugram. Jai Hind. Today I, ASI alongwith my colleague police officials HC Vinay 732/GGM, HC Jaswant 725/GGM Crime Unit Sector: 10, Gurugram with my laptop and printer and my investigation kit in government vehicle, the driver of which is Head Constable Kuldeep 813, was present at the Bus Stand, Sohna Gurugram for the prevention of crime. The informer met me and informed that a boy Zaheer resident of Mewat

alongwith his three friends on two black colour motorcycles will come from Tawdu towards Sohna and there is intoxicating substance in 02 bags with them. They will go to Gurugram via Sohna for selling the same. If the nakabandi is staged at the height of the Sohna hill, then all the four persons can be nabbed with the bags of intoxicated substance. The information is believable. Thus, I told my colleagues about this information and I, ASI informed ACP Sohna Sh.Abhilaksh Joshi from my mobile No.9990311175 on his mobile No. 9999981810 and a notice under section 42 NDPS Act was prepared and sent to the Police station through Head Constable Kuldeep 813. Thereafter, the informer was taken along. I, ASI alongwith the raiding party have reached old water tank near the turning of the road from Tawdu to Sohna, near to which is also a tower and nakabandi was staged alongwith police officials. I, ASI told the facts to the passers-by and asked them to join the raiding party. By virtue of the evening time, all showed their compulsion and left. Due to the shortage of time, notice could not be given to anyone. Thereafter 2 boys each on 2 black colour motorcycles were seen coming from the side of Tawdu. Out of them, one motorcycle was running ahead, on which two persons were riding. A white colour bag was put between them. Behind it, on the second motorcycle also, 2 boys were riding. Two white colour bags were put between them. The informer signalled with his hand and told that these are the persons. There is intoxicated substance in the bags. The informer was relieved and I, ASI with the help of the colleagues signalled the motorcycles coming from the front to stop. Upon seeing the nakabandi, they tried to turn back the motorcycle immediately. The boy sitting pillion fell down with the bag and at the same time, the both the persons sitting on the second motorcycle threw 02 bags on the road and fled from the site. I, ASI with the help of my colleagues nabbed the boy lying on the road with three bags and asked his name and address. Then he disclosed his name as Zahir son of Khaleel, resident of village Pipaka, Police station Tawdu, District Nuh, Mewat. I told him that you have a plastic bag and your friends have thrown two plastic bags on the road. There is suspicion to have

intoxicated substance cannabis in it. A notice under Section 50 NDPS Act was given to him and read over to him that he can get the search of both the plastic bags from any gazetted officer or Magistrate. Upon this Zahir gave his consent to get the search from gazetted officer and put his signatures. Thereafter, I, ASI checked the list of Duty Magistrate already available in my phone. In the South Gurugram, Sh. Sudhir Singh, ETO/DETC (ST) South Gurugram is posted. Upon this, I from my mobile phone 9990311175 at 06.13 PM contacted the gazetted officer Sh. Sudhir Singh, ETO/DETC (ST) South Gurugram on his mobile No.8901173142 and told him the facts and requested him to come to the site. HC Kuldeep 813 after the service of the notice under section 42 NDPS Act, has come present. I was waiting for the gazetted officer Sh.Sudhir Singh, ETO/DETC (ST) South Gurugram and the gazetted officer Sh. Sudhir Singh, ETO/DETC (ST) South Gurugram came present. Then Sh. Sudhir Singh, ETO/DETC (ST) South Gurugram, gazetted officer interrogated the nabbed boy and seen the notice under section 50 NDPS Act. Thereafter Sh. Sudhir Singh, ETO/DETC (ST) South Gurugram, after searching me, asked me to search Zaheer. Thereafter I myself made the videography from my mobile phone and Sh.Sudhir Singh, ETO/DETC (ST) South Gurugram opened the three plastic bags lying near the nabbed boy Zaheer and checked it. In all the three plastic bags, intoxicated substance cannabis was found. Sh.Sudhir Singh, ETO/DETC (ST) South Gurugram weighed the same with the digital weighing machine already available with me. The three plastic bags were weighed separately and the first bag was weighed as 18 kilo 400 grams, second bag was weighed as 16 kilo 450 grams and the third bag was weighed as 14 kilo 370 grams. The total weight of three bags was 49 kilo 220 grams. In this regard, the license was sought about the recovered intoxicated substance cannabis from Zaheer. He could not produce. The recovered intoxicated substance cannabis was put in three separate white clothed bags separately and prepared the parcels of clothed bag and I, ASI stamped the clothed parcels with my two stamps mark RD and ETO /DETC (ST) South Gurugram, gazetted

officer stamped one stamp mark DK and sample stamp was separately prepared. Three clothed parcels of intoxicated substance cannabis were taken into police possession through memo of possession as evidence. After the use of the stamp, the same was handed over to HC Vinay Kumar, 732 and the gazetted officer put his stamp with him. On the memo of possession, the witnesses and the accused put their respective signatures and the gazetted officer seen the memo of possession. Zaheer and his three other unknown friends, by carrying 49 kilo 200 grams intoxicated substance cannabis with them without any license have committed an offence under section 20 (b) (ii) (C) NDPS Act. Upon this, the report has been written and is being sent to the Police station City Sohna through HC Kuldeep 813. After the registration of the FIR, its number be intimated and another investigating officer be sent to the site for further action. I, ASI am busy in the investigation at the site of occurrence. Place of occurrence: Near old water tank made near the turning of the road from Tawdu to Sohna, Latitude 28.243755, Longitude: 77059695, Crime Unit, Sector: 10, Gurugram, dated 21.08.2024, time: 10.15 PM. Upon the receipt of the above report at the Police station, the FIR No.310 dated 21.08.2024 under section 20 (b) (ii) (C) NDPS Act, Police station City Sohna, District Gurugram has been registered and the copies of the FIR were prepared by the computer operator on CCTNS. The copies of the FIR will be sent to the Illaga Magistrate and senior officers through post. After the registration of the case, the original report and the file is handed over to the HC Kuldeep 813 and is being sent to the ASI Rampal 704/GGM. Upon coming present of ASI Amit 547/GGM 9811071137 at the Police station for further investigation, he has been sent to the site of occurrence. By virtue of not having the CCTNS account of ASI Amit 547/GGM 9811071137, this FIR after checking, has been registered in the presence of HC Devender 23/GGM. The I.O. of this case is ASI ASI Amit 547/ GGM.”

3. Contention

On behalf of the petitioner

Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case and no recovery has been effected from him. He further argues that the name of the petitioner has surfaced only on disclosure statement and asserts being placed at par rather at better footing with co-accused namely Jahir, who has been granted the concession of bail by the Court of Additional Sessions Judge, Gurugram, vide its order dated 20.12.2024 (Annexure P-2).

On behalf of the State

Learned State counsel has vehemently opposed the prayer made in the present petition stating that the petitioner along-with other co-accused has rightly been booked under Section 20 (b) (ii) of NDPS Act, and argues that a huge quantity weighing 49.220 grams of ganja has been recovered in the present case which falls under commercial quantity therefore rigors of section 37 of NDPS Act would create a bar for granting bail to the petitioner though admits that he has been named on the disclosure statement of co-accused and one of the co-accused from whom the recovery was effected has already been released on regular bail by the trial court below order dated 20.12.2024.

Heard respective parties for the parties.

Analysis

While addressing the objectives of the NDPS Act, the Hon'ble Supreme Court in the case of *“Durand Didier v Chief Secretary, Union Territory Of Goa (1990) 1 SCC 95”* emphasized that the rampant issue of clandestine smuggling and illegal trafficking of drugs and substances has led to widespread drug

addiction, particularly among adolescents and youth. This has had a harmful and devastating impact on society. With grave concern, it was noted that the organized activities of criminal groups and the illegal importation of narcotic drugs and psychotropic substances into the country have caused a significant increase in drug addiction, especially among young people and students, affecting both genders. The menace has grown to alarming proportions in recent years. Consequently, to effectively combat and eliminate this growing threat, which is causing severe and harmful effects on society as a whole, Parliament, in its wisdom, enacted the NDPS Act of 1985, introducing provisions that mandate minimum imprisonment and fines for such offences.

The tactics employed by drug peddlers engaging in the narcotics trade often involve starting with small or intermediate quantities or taking the defence of disclosure, banking on the assumption that, even if apprehended, they will be granted bail. This, however, cannot be the intended purpose of the law. Such individuals, involved in trafficking even modest amounts of contraband or managing the mafia by sitting at their homes, are akin to termites eroding the fabric of society. It is imperative that, when considering bail applications from those engaged in the trafficking of small or intermediate quantities or where no contraband is effected from their conscious possession, the Court should take a firm and resolute stance, addressing them with the utmost severity to curb this insidious menace.

Insofar as the main contention of the petitioner that he was named on the basis of disclosure statement and no recovery was effected from him is concerned to rebut this stand the state counsel has argued that the petitioner fled away from the scene by throwing the sacks of ganja on the road side and only Jahir the co accused was apprehended at the spot along with 49.220grams of ganja,

meaning thereby he has actively participated in facilitating of the commissioning of the alleged offence. With regard to his another submission that other co accused person from whom the recovery has been effected is enlarged on regular bail is concerned to that this court would opine that the said order dated 20.12.2024 (Annexure P-2) is bad in law as total recovered contraband was 49.220 grams of ganja however the petitioner has been held accountable only for 18 KG on the basis that the sack recovered from the petitioner weighed around 18 kg which is non commercial in nature.

In the light of above, dictum and discussions made and the modus operandi of the kingpins engaged in illicit activities, whether trafficking in small or intermediate quantities, must be met with unwavering resolve and stringent action. The intent of the legislature and the sanctity of the rule of law must be upheld at all costs, and cannot be allowed to be undermined, regardless of the quantity involved.

Hence, the same stands dismissed with no order as to costs.

06.02.2025

Meenu

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>