

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-24321-2024
Reserved on: 10.02.2025
Pronounced on: 25.04.2025

TEJPAL

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Balraj Gujjar, Advocate for the petitioner.
Mr. Vipul Sherwal, AAG, Haryana.

SANJIV BERRY, J. (ORAL)

The instant second petition has been preferred by the petitioner under Section 439 of the Code of Criminal Procedure for grant of regular bail in the following case (Annexure P-1):-

FIR No.	Dated	Sections	Police Station
37	17.01.2023	20(ii-C) of NDPS Act	Hodal District Palwal

2. It is *inter alia* contended by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in the present case. He contends that the alleged recovery has been planted upon the petitioner and he has no concern whatsoever with the same. He submits that the petitioner is in custody since 17.01.2023, after completion of investigation, challan has already been presented in Court, and conclusion of



trial will take sufficient long time. He has referred to the judgments cited as **Dayaram Singh and Anr. vs. State of Madhya Pradesh, Law Finder Doc Id# 2589359 and State of Himachal Pradesh vs. Roshan Lal, 2010, SCC (Online) HP 2554** to argue that the FSL report in the present case is totally silent about the percentage of Tetrahydrocannabinol, Cannabino and Cannabidiol, as such, in the absence of the aforesaid chemical test being conducted by the Forensic Science Laboratory, no presumption of alleged recovery from the petitioner to be of ganja can be drawn so as to attract the provisions of NDPS Act. Hence, prays for grant of regular bail to the petitioner.

3. On the other hand, learned State counsel referring to the reply filed by the State has assailed these arguments by submitting that from the conscious possession of petitioner 28 Kg 934 grams was recovered and the same falls within the purview of commercial quantity, thus, hit by provisions of Section 37 of the NDPS Act. He further submits that there is no such requirement as per law that the report of the FSL must contain all the details of the test conducted, nor is any requirement of any particular percentage of resin or tetrahydrocannabinol relevant or necessary for the purpose of offence under NDPS Act. He has referred to the Full Bench judgment of Himachal High Court passed in **State of Himachal Pradesh vs. Mehboon Khan 2014(2) RCR (Criminal)447**, Division Bench judgment of Delhi High Court passed in **Dilip Vs. State, 2011 CriLJ 334; Pawan Kumar vs. State of Punjab; Law Finder Doc Id# 2082858; Sanjay Upadhya vs. State of Punjab passed in CRM-M-44787 of 2023.** Hence prayed for dismissal of the present petition.



4. As per the case of the prosecution, the instant FIR was registered by the police on the basis of a secret information that co-accused Birender and the petitioner were transporting ganja patti on a motorcycle. Accordingly, the police intercepted the motorcycle on 17.01.2023 wherein, co-accused Birender was riding the motorcycle while the petitioner was sitting on the pillion and was carrying a plastic bag, which was having 14 packets containing ganja patti. Upon weighing, their consolidated weight was 28 kg 934 grams. Accordingly, petitioner and co-accused were arrested.

5. Heard learned counsel for the parties.

6. After considering the rival contentions and perusing the record, it is observed that as per the case of the prosecution 28 kg 934 grams of Ganja Patti was recovered from the conscious possession of the petitioner when petitioner and co-accused were apprehended by the police party on 17.01.2023.

7. During course of investigation, the samples were duly sent to the Forensic Science Laboratory for testing. The learned State counsel has annexed the report of Forensic Science Laboratory as (Annexure -R/2) along with the reply filed by the State. The perusal of the same would reveal as under:-

Description of article contained in parcel

Physical appearance: *Greenish brown vegetative material having flowering/fruitleing tops and seeds etc.*

Observations:

- *The tests were positive for the presence of Tetrahydrocannabinol. Cannabinol and Cannabidiol in the samples (1 to 14).*



- *Characteristics trichomes of Ganja were present in the samples (1 to 14).*
- *The tests were positive for the presence of Ganja in the samples (1 to 14)*

Opinion: *The samples (1 to 14) were identified as ‘GANJA’.*

8. The relevant provisions of Section 2 the NDPS Act, 1985 is also reproduced as under:-

2 (iii) 'cannabis (hemp) 'means:

(a) charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;

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(xiv) 'narcotic drug' means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured goods;

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9. Section 20 of the NDPS Act deals with punishment for contravention in relation to cannabis plant and cannabis, which reads as under:-

20. *Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,*



(a) cultivates any cannabis plant; or (b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable:

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees”

10. The perusal of FSL report (Annexure R-2) would reveal that the physical appearance of confiscated narcotic drug was 'greenish brown vegetative material having flowering/fruited tops and seeds etc.' and the tests were found positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol in the samples. The FSL report opined that the samples are identified as 'GANJA'. The aforesaid findings of the Forensic Science Laboratory are required to be co-related with the definition of cannabis under Section 2(iii) of the NDPS Act. Cannabis (hemp) has been



defined to mean charas under clause (a) which is a separated resin, in whatever form, which is obtained from cannabis plant. Ganja has been defined under clause (b) and would mean flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated or any mixture, with or without any neutral substance of any of the above forms of cannabis or any drink prepared therefrom. Since the legislature in its wisdom has used the expression 'means' for defining cannabis, the same is exhaustive in nature. The plain and simple language used for defining ganja would show that it means the flowering or fruiting tops of the cannabis plant but excluding the seeds and leaves when not accompanied by the tops. In other words it means that when tops are accompanied, then seeds and leaves are not to be excluded. It would also mean that if the material is exclusively seeds and leaves without any flowering or fruiting tops, then it may not be a ganja but once flowering or fruiting tops are included in the material, then even if there is presence of seeds and leaves, then still it will be ganja. Apart from the same, such a material which includes flowering or fruiting tops of the cannabis plant would still be ganja even if by whatever name they may be known or designated. In other words the expression 'Ganja' if it is known or called by any other expression, still by way of legislative command, the same would still be within the purview of the definition of 'Ganja'. Furthermore, as per Section 2(iii) (c) even a mixture with or without any neutral material of any of the above forms of cannabis or any drink prepared therefrom would also be within the meaning of expression 'Cannabis'. In other words, even a mixture of charas and ganja would also fall within the



definition of cannabis with or without any other neutral material.

11. Much emphasis has been laid by learned counsel for the petitioner to the effect that in the report of the FSL there is no mention of percentage of Tetrahydrocannabinol (THC), therefore, it will not be sufficient to bring the sample stuff within the definition of 'ganja'. However, considering the facts and circumstances and the judgments referred to above, it transpires from the definition under Section 2(iii) of NDPS Act coupled with the report of FSL that the confiscated contraband was "ganja", there remains no doubt qua the contraband recovered from the petitioner to be 'ganja'. The preposition of law in this regard has been well settled by Hon'ble Supreme Court in ***Hira Singh and another v. Union of India and another, [2020(2) RCR (Criminal)523]*** to the fact that the neutral substance cannot be excluded from the total quantity while determining the actual weight., and whenever the confiscated contraband is found to be of commercial quantity then the provisions of Section 37 of NDPS Act operate.

12. In the Full Bench of Himachal Pradesh High in ***State of H.P vs. Mehboon Khan (supra)*** the effect of Tetrahydrocannabinol (THC) was discussed wherein although dealing with confiscated quantity of cannabis including ganja, it is categorically been observed therein that percentage of Tetrahydrocannabinol (THC) in a sample of contraband is not required to be indicated as a determinative factor in support of its purity and rather the mere presence of Tetrahydrocannabinol (THC) in the stuff analyzed itself is sufficient to arrive at a conclusion that same is charas and as such the chemical examiner is not under any legal obligation to show the percentage



of Tetrahydrocannabinol (THC) which is a narcotic substance in Narcotic Drug falling in any of the categories namely cannabis plant, charas, hashish oil, liquid hashish, or ganja. The Hon'ble Full Bench had also discussed that the law laid down by the Division Bench in **Sunil vs. State of Himachal Pradesh, 2011(5) RCR (Criminal)726** is not a good law nor any such interpretation as mentioned therein is legally possible.

13. Moreover, Hon'ble Supreme Court in '**Shiv Kumar Mishra v. State of Goa' [2009(3) SCC 797]** while referring to the definition of ganja contained under Section 2(iii)(b) of NDPS Act had observed that when seized Ganja consisted of greenish brown colour leafy and flowery parts of the plant, then it will fall within the definition of Ganja and would include the seeds and leaves of the cannabis plant since the seized Ganja was accompanied by the flowery parts of the plant. It was further observed therein that the moisture content is not to be excluded while ascertaining the total weight of seized material.

14. It has further been held by Hon'ble Division Bench of Delhi High Court in **Dilip's case (Supra)** that the percentage of the THC in sample of charas is not determinative of the the purity of the sample and the test resulting in the quantification of percentage content of THC is neither relevant nor necessary for considering the grant of bail or awarding sentence under the Act.

15. It has been held therein that neither the NDPS Act nor any notification make any reference to the purity of charas or ganja, and once the contraband has been determined to indicate cannabis, whether in the form of charas or in the form of ganja or as a mixture containing either of



two, with or without any neutral substance the entire weight of the contraband would have be considered for determining whether the recovery is of small quantity, intermediate quantity or a commercial quantity. The quantification of the percentage of the contents of THC is not relevant in relation to the cannabis qua which the punishment is awarded under Section 20 of the NDPS Act.

16. This Court in *Pawan kumar's case (supra)* has held that the test of narcotic drug conducted by the experts cannot be said to be without any probative value because the statute does not provide that the report must contain the entire procedure adopted by the expert while drawing such conclusion and opinion of the expert is advisory in nature.

17. Therefore, in the light of the above discussion, it is settled preposition by now that there is no legal requirement regarding the mention of percentage of resin in the sample by the FSL and the same by no means is a determinative factor for quantification of the contraband to be falling under small quantity, intermediate quantity or commercial quantity nor is the chemical examiner under any legal obligation to state the percentage of Tetrahydrocannabinol (THC) which is a narcotic substance in the narcotic drugs falling in any of the categories of cannabis plant, charas, hashish oil, liquid hashish, or ganja. Nor even the expert is under obligation to mention in the report the details of the test conducted by him, to arrive at a particular conclusion, therefore, the contentions of learned counsel for the petitioner that in the absence of the percentage of Tetrahydrocannabinol (THC) being mentioned in the chemical examiner report, the recovered stuff cannot be categorized as Ganja, does not hold good. On the contrary, from the perusal



of Forensic Science Laboratory report (Annexure R-2) that the samples recovered from the petitioner contained presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol and there is opinion of the expert qua the samples being identified as ganja. The recovery of the same from the conscious possession of the petitioner happens to be of 28 kg 934 grams which therefore, falls within the purview of the commercial quantity as envisaged under Section 37 of the NDPS Act. Therefore, considering the nature and gravity of the offence, as well as the fact that the recovered contraband falls within the purview of ‘commercial quantity’, attracting bar under Section 37 of the NDPS Act, no case is made out in favour of the petitioner for grant of regular bail at this stage, as a consequence, the petition is hereby dismissed.

18. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

19. Pending application(s) if any shall also stand disposed of.

(SANJIV BERRY)
JUDGE

25.04.2025

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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No