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

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CRM-M-44874-2024 (O&M)
Date of decision: 05.02.2025

Aaditya Sharma**...Petitioner**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Raj Kumar Gupta, Advocate and
Ms. Lavanya Gupta, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No. 34 dated 15.02.2024, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station Kharar, District SAS Nagar.

2. Brief facts of the case relevant for the disposal of the present petition are that on 15.02.2024, a secret information was received by a police party headed by SI Sukhwinder Singh to the effect that the petitioner, who was habitual in selling drugs, was coming in a car bearing registration number HP-23-D-7947 along with huge quantity of *Hashish (Charas)*. Believing the information to be reliable, a barrier was laid at the informed place and on noticing the said car coming from the side of Govt. Polytechnic

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College, which was being driven by a young man, the same was signaled to stop. The said person was having a heavy white colour polythene bag in his hand, which he threw on the road on seeing the police party and tried to turn back. However, he was apprehended and on interrogation, he disclosed his name as 'Aaditya Sharma', who is the present petitioner. While following the usual formalities as prescribed under the NDPS Act, the search of the said polythene bag was conducted and recovery of 01 kg. 100 grams of *Charas* was effected from the same. The petitioner was formally arrested at the spot. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for commission of aforementioned offence. He had moved an application for grant of regular bail before the trial Court but the same had been dismissed, vide order dated 02.04.2024.

3. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. The prosecution story is false and concocted one. Mandatory provisions of Sections 42 and 50 of the NDPS Act were not complied with. The FSL report only states that *Tetrahydrocannabinol* and other *Cannabinoid* was found in the sample but no percentage is mentioned. Hence, it will be a question of debate as to whether the recovered contraband was *Bhang*, *Ganja* or *Charas*? Even otherwise, the alleged recovery of the contraband was not recovered from the conscious possession of the petitioner. Investigation has since been completed and *challan* has been presented. Trial is likely to take time. The petitioner is in judicial custody since 15.02.2024. No useful purpose would be served by keeping him in custody anymore. Therefore, it is urged that the petition deserves to be

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allowed and the petitioner deserves to be granted benefit of regular bail. To fortify his arguments, learned counsel for the petitioner has placed reliance upon order dated 19.07.2021 passed by a coordinate Bench of this Court in ***CRM-M-16150-2021***, titled as ***Balwinder Singh vs. State of Punjab***, wherein, while relying upon certain other judgments passed by this Court, the accused was granted regular bail.

4. *Per contra*, learned Assistant Advocate General, Punjab, on the basis of the status report, has vehemently argued that the petitioner is not entitled to get benefit of bail as commercial quantity of the contraband was recovered from him. He was duly named in the secret information. His story regarding false implication and plantation of the recovered contraband is concocted one. FSL report has been received, as per which, *Charas* has been found in the recovered contraband. It is further argued that since the recovery of the contraband effected from the petitioner falls under the commercial quantity, the rigors of Section 37 of the NDPS Act would be attracted against him. The trial is going on at a proper pace. It is also argued that if the petitioner is released on bail, he may abscond or indulge in similar offences. Hence, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. As per the allegations, on receipt of a secret information on 15.02.2024 that the petitioner was coming in a car bearing registration number HP-23-D-7947 along with huge quantity of *Hashish (Charas)*, a barrier was laid at the informed place and on seeing the said car coming from opposite side, the same was signaled to stop but the petitioner, instead

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of stopping the car, threw a polythene bag out of the car and tried to turn his car back. However, he was apprehended by the police party. On search of the said polythene, which the petitioner had thrown, recovery of 01 kg. 100 grams of *Charas* was effected. Learned counsel for the petitioner has argued that the FSL report only states that *Tetrahydrocannabinol* and other *Cannabionoid* were found in the sample but no percentage is mentioned and it will make out an arguable point as to whether the recovered contraband was *Bhang*, *Ganja* or *Charas*? He has also raised contention that the alleged recovery of the contraband was not effected from the conscious possession of the petitioner as it was done from the polythene bag, which was thrown on the ground.

7. A perusal of the FSL report shows that it is clearly reported that *Charas* was found in the sample. Hence, at this stage, it cannot be stated that the recovered contraband was not *Charas*. So far as the percentage of *Tetrahydrocannabinol* and other *cannabionoid* is concerned, I do not deem it appropriate to look into the same as this fact it is to be looked into and decided by the learned trial Court after appreciating the entire material placed on record before it. This Court, at the stage of deciding a petition seeking grant of regular bail in cases under the NDPS Act involving commercial quantity of the contraband, is only required to see as to whether there are reasonable grounds to believe that the petitioner is not guilty of the subject offence and in case, he is released on bail, he would not commit any such or similar offence. So far as the argument raised by learned counsel for the petitioner that the recovery was not effected from the conscious possession of the petitioner and the same makes out a case for grant of bail

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to him is concerned, it is revealed from the record that the petitioner was apprehended by the police party on the basis of a secret information, in which he was duly named. Subsequently, recovery of 01 kg. 100 grams of *Charas* was effected from a polythene bag, which was thrown by him on seeing the police party and in the process of fleeing away.

8. Before proceeding further, it will be profitable to have a look on law on the issue of ‘conscious possession’. In ***Madan Lal vs. State of Himachal Pradesh : (2003) 7 SCC 465***, Hon’ble Supreme Court has held that whether there was conscious possession has to be determined with reference to the factual backdrop. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended. It was further held that once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Reference can also be made to the authority cited as ***Dharampal Singh vs. State of Punjab : (2010) 9 SCC 608***, wherein it was held by Hon’ble Supreme Court that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In ***Mohan Lal vs. State of Rajasthan : (2015) 6 SCC 222***, Hon’ble Supreme Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or

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personal knowledge as to the existence of the contraband and the intention based on this knowledge.

9. On applying the ratio of law as discussed above to the peculiar facts of the present case, it cannot be stated that the recovery was not effected from the conscious possession of the petitioner for the reasons mentioned below:

- i. He was duly named in the secret information;
- ii. The aforesaid vehicle was a private one and he was the sole occupant therein;
- iii. He has thrown the polythene bag containing *Charas* on seeing the police party and it is not the case that the said bag was already lying there;
- iv. It can also not be assumed that he was not aware of the fact that what was kept in the said bag as the same was being carried by him only.
- v. The attempt to discard the contraband upon seeing the police do not automatically negate possession. Instead such actions indicate an intention to evade liability, which makes the role of the accused in the offence even more evident.

10. More so, the quantity of the contraband recovered in this case falls within the ambit of commercial quantity and no ground has been made out before this Court so as to believe that the petitioner did not commit subject offence or in case, he is released on bail, he would not commit any such or similar offence. Hence, the rigors of Section 37 of the NDPS Act would certainly be attracted against him. The arguments raised by learned counsel for the petitioner with regard to alleged lacunas in investigation cannot be looked into at this stage as the same is to be decided by the trial

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Court after appreciating the entire evidence and material placed on record before it. Trial is going on and there is nothing on record to suggest that there would be any undue delay in conclusion of trial. It has been seen that the denial of bail has prevented the accused from fleeing from the criminal justice and protected the society by preventing that additional criminal activity. It is believed that the graver the crime the graver is the chances of absconding. Even otherwise, in NDPS cases, where the sentence is of ten years, the accused should generally be not released on bail as in such like cases, negation of bail is the rule and its grant is an exception. Reliance in this regard can be placed upon the observations made by Hon’ble Supreme Court in authority cited as ***Narcotics Control Bureau vs. Kashif : 2024 INSC 1045***. Therefore, keeping in view the gravity of allegations as levelled against the petitioner, the quantity of alleged contraband recovered from the petitioner, the quantum of sentence which the conviction may entail and the attendant facts and circumstances of the case, I am of the considered opinion that he does not deserve to be granted concession of regular bail, at this stage. Accordingly, the present petition is dismissed.

11. It is made clear that any observation made herein above is only for the purpose of deciding the present petition and the same shall have no bearing on the merits of the case.

05.02.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>