

CRM-M-724-2025

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-724-2025
Reserved on: 05.05.2025
Pronounced on: 19.05.2025

State of Haryana

...Petitioner

Versus

Vicky

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Naveen K. Sheoran, D.A.G., Haryana.

 Mr. Kamal Chaudhary, Advocate
 for the respondent.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
57	16.02.2024	Hodal, District Palwal	20 (b) (ii) C of NDPS Act

1. Seeking cancellation of bail granted to the respondent vide order dated 02.04.2024, the State has come up before this Court under Section 439(2) CrPC.
2. While granting bail, the Additional Sessions Judge, Palwal, took into consideration the facts of the case as outlined in paragraph 3.
3. The prosecution's case is that on 15.02.2024, police officials were on patrol, then they received secret information that one Vicky and Narender dealt in Sulpha. They claimed to comply with the requirements of Section 42 of the NDPS Act and then spotted both Vicky and Narender, who were found sitting on a bench. One of them was holding a white polythene bag while the other was taking something out of the said polythene bag. On seeing the police party, the person who was taking out the stuff put it back. On enquiry, the person holding the bag revealed his name as Vicky (Respondent herein), and the person who was taking something out of the bag disclosed his name as Narender. Subsequently, the Investigator claims to have served notice under Section 50 of the NDPS Act, and a search was conducted in the presence of a Gazetted Officer, which led to the recovery of one kg and 400 grams of Sulpha.
4. Before the Sessions Court, the accused (Respondent herein) had sought bail on the grounds of pre-trial incarceration, false allegations, and no recovery. He further stated



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that even if the allegations were taken to be true, the recovery was from the co-accused and not from the petitioner. However, State counsel had opposed the bail on the grounds of sufficient evidence and also mentioned that the quantity recovered from the applicant was an intermediate quantity. It is appropriate to reproduce para no. 5 of the order, which reads as follows:

“5. Learned Public Prosecutor for the State on the other hand, has opposed the prayer for grant of bail to the applicant on the ground that he was involved in illegal sale and purchase of sulphur and the quantity recovered from the applicant is intermediate quantity. He argued that investigation is pending and final report is yet to be filed.”

5. Based on the quantity being intermediate, and the above-mentioned facts, the trial Court granted bail.

6. Feeling aggrieved, the State has come up before this Court on the ground that the quantity involved is commercial because Sulphur is Charas and the quantity greater than 1 kg falls in the commercial category. The State has handed over the FSL report dated 26.04.2024 in this case to establish this fact.

7. The learned counsel for the respondent did not dispute receiving such a copy.

8. Thus, to ascertain whether the sulphur mentioned in the FIR was Charas or Ganja, it would be appropriate to refer to the report received from FSL, which reads as follows:

*“Description of article(s) contained in parcel(s)
Description of parcel(s)/Exhibit(s)
One sealed envelope Bearing Barcode-72062-240226-2841210
Sample marked here as – BH/N-128/24
Physical appearance- Greenish brown solid substance
Weight of sample received- 50 g with polythene.*

LABORATORY EXAMINATION

Analytical Techniques Applied:

Colour tests, Microscopic and TLC.

Observations:-

- . The tests were positive for the presence of Tetrahydrocannabinol, Cannabinol and Cannabidiol in the sample.*
- . Characteristics trichomes of Charas were present in the sample.*
- . The tests were positive for the presence of Charas in the sample.”*

9. It would be appropriate to reproduce Section 2(3) of NDPS Act which reads as follows:

(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;

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- (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;

10. A straightforward reading of Section 2(3) of the NDPS Act clarifies that Charas is a separated resin, while Ganja comprises the flowering or fruiting tops, excluding seeds and leaves, when not accompanied by the tops. Thus, on the face of it, ganja is clearly different from Charas for the reason that ganja refers to flowering or fruiting tops, whether accompanied by seeds or leaves or not. However, if seeds and leaves are not accompanied by flowering or fruiting tops, then it would not fall within the definition of Ganja, but that is not the point in issue. The point at issue is whether the substance recovered was, prima facie, Ganja or Sulpha, and whether Sulpha is Charas or Ganja. Charas is a resin, which itself is a viscus substance, which means thick or sticky, and it is visually different from Ganja, which is the flowering or fruiting tops. In the present case, in the investigation, the word Sulpha was used for ‘Charas’ and not for ‘Ganja’. Needless to say, the laboratory report found the material to be Charas and also described its physical appearance as a greenish-brown solid substance, indicating that it was not flowers, as flowers would not be solid. Thus, on the face of it, the substance recovered in the present case was Charas.

11. Even if it were mentioned as Sulpha in the reply, it would not alter its meaning. As referred to above, at the time of opposing bail, the Public Prosecutor either mistook Sulpha for Ganja or mis-calculated the weight, which falls in commercial quantity. The possibility of the statement made under some bona fide belief cannot be ruled out, however, since the substance which was recovered was 1 kg 400 grams of Charas, it would fall under commercial quantity in the following terms:

Substance Name	Cannabis and cannabis resin/ Charas/ Hashish/ Sulpha
Quantity detained	1.4 Kg
Quantity type	Commercial
<i>Drug Quantity in % to upper limit of Intermediate</i>	140.00%

<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>	
Notification No	S.O.1055(E)
dated	10/19/2001

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Sr. No.	23
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	Cannabis and cannabis resin
Other non-proprietary name	CHARAS, HASHISH
Chemical Name	EXTRACTS and TINCTURES OF CANNABIS
Small Quantity	100 Gram (i.e. equivalent to 0.1 Kg)
Commercial Quantity	1000 Gram (i.e. equivalent to 1 Kg)

Declared as punishable under NDPS Act and as per schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985	
Notification No	S.20 & S.2(iii) NDPS Act, S.O.821(E)
dated	11/14/1985
Sr. No.	S.2(iii)
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN)	*****
Other non-proprietary name	*****
Chemical Name	S.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; (iv) “cannabis plant” means any plant of the genus cannabis; S. 2(viiib)] “illicit traffic”, in relation to narcotic drugs and psychotropic substances, means — (i) cultivating any coca plant or gathering any portion of coca plant; (ii) cultivating the opium poppy or any cannabis plant; (iii) engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;



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12. Thus, the rigors of Section 37 of the NDPS Act would apply, which were not adhered to, and as such, on this ground alone, the bail was wrongly granted and the same has to be cancelled.

13. Counsel for the respondent submits that bail should not be cancelled for the reason that, during the pendency of the bail, there is no allegation of the respondent repeating the offence, and the respondent's custody is approximately 1 month and 15 days, which is sufficient, given that he was given bail and was not at fault. He never raised an argument that he was seeking bail on merit, but it was the fault of the Court, which had taken the case properly; as such, he would not be made to suffer. State counsel submits that when the Public Prosecutor and the trial Court took the quantity as intermediate, it was the duty of the respondent to have filed an application telling the Court to correct its mistake, as it was contrary to law, which the respondent did not do. Furthermore, in the Court, the respondent delayed the matter. Given above, these submissions of the accused cannot override the mandatory conditions of S. 37 of the NDPS Act.

14. At the time of granting bail, the petitioner's custody is 01 month and 15 days, and the petitioner is not entitled to bail even on custody.

15. Given the above, the petition of the State to cancel the respondent's bail is accepted, and the impugned order dated 02-04-2024 is quashed and set aside. Bail bonds are cancelled. The petitioner is directed to surrender forthwith without any delay.

(ANOOP CHITKARA)
JUDGE

19.05.2025
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: **YES.**