

Dharam Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-04-1995

Reported in : 1995(3)WLC739; 1995(2)WLN248

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Cr. Misc. Bill No. 570 of 1995

Appellant : Dharam Chand

Respondent : State of Rajasthan

Judgement :

Rajendra Saxena, J.

1. Heard, Preused the case diary.

2. It appears that on the source information, Badrilal, S.I.P.S. Bhim alongwith motbirs and police party raided the house of petitioner Dharam Chand Jain. In the open 'Bada' of his house, brinjal, 'Hara dhaniya' plants, a few plants of genus cannabis of the height of one feet to two feet were found standing. Those green cannabis plants which were uprooted, weighed about 5 kgms. and out of those, a sample of about 1 kg. of green plants was sealed. The petitioner did not possess any licence for cultivating the said cannabis plant.

3. A perusal of the case diary reveals that those green cannabis plants had no flowers or fruiting tops. The sample of those green plants was sent to the F.S.L. but its report is still awaited. Section 2(iii)(b) of the NDPS Act, 1985, defines 'ganja' which means 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 whereas cannabis plants as per Section 2(iv) means any plant of the genus cannabis. According to Modi's Medical Jurisprudence and Toxicology 1972 Edition vide page 693, 'Bhang', 'Siddhi', 'Patti' or Cannabis Sativa consist of dried leaves and fruiting shoots whereas Ganja has a rusty green colour and a characteristic odour and consists of the flowering or fruiting tops of the female plant coated with resin. Admittedly, the seized plants did not have flowering or fruiting tops. Therefore, at this stage when the F.S.L. report is not available there do not exist reasonable grounds to infer that the seized plant was that of 'Ganja'. It is needless to mention that cultivation of Bhang without licence is punishable under the Rajasthan Excise Act and not under the NDPS Act. Besides this, the I.O. has not collected any evidence to show that the petitioner is engaged in cultivating and selling the Ganja. Petitioner is aged about 73 years and the investigation as also the trial of this case are also likely to take considerable time. It has also not been alleged that the petitioner is previous convict under the NDPS Act.

4. Therefore keeping in view all the facts and circumstances of the case as also the provisions of Section 37 of the said Act, I feel that it will be just and proper to grant bail to the petitioner and, accordingly, it is ordered that petitioner Dharam Chand be released on bail provided he executes his personal bond in the sum of Rs. twenty thousand and furnishes two sound and substantial sureties in the sum of Rs. ten thousand each to the satisfaction to the learned special Judge NDPS Act Cases, Rajsamand for his personal appearance before that court on each and every date of hearing till the completion of the trial. Petitioner shall also give a written undertaking to the effect that he shall keep peace and be of good behaviour and shall not commit any offence punishable under the NDPS Act.