

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl.Misc. No.M-12888 of 2015
Date of Decision : 21.8.2015

Ashok Kumar

.....Petitioner

Vs.

State of Punjab

.....Respondent

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. B.S. Kathuria, Advocate for the petitioner.
Mr. Deep Singh, AAG, Punjab.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Petitioner seeks bail pending trial in FIR No.50 dated 26.2.2014 under Sections 18/22/61/85 of NDPS Act, registered at Police Station Sarabha Nagar, Ludhiana, Distt. Ludhiana.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case. He refers to report Annexure P-1, Order Annexure P-2, two petitions filed by the petitioner before this court Annexures P-3 and P-4 as well as plaint of a civil suit for recovery as Annexure P-5, to contend that since the petitioner has been pursuing his litigation against the officers/officials of the concerned police station, he has been falsely implicated in the present case. Earlier also, petitioner was falsely implicated in FIR No.38 dated 5.3.2001 under Section 15 of the NDPS Act,

but he was acquitted in the said case. He concluded by submitting that since the prosecution evidence is still going on in the present case, conclusion of trial will take long time. In support of his contention, learned counsel for the petitioner places reliance on the order dated 15.6.2015 passed in CRM No.M-16649 of 2015 (Kuldeep Singh @ Papu Vs. State of Punjab). He prays for allowing the present petition.

On the other hand, learned counsel for the State submits that as per his own showing, petitioner was found involved in another FIR under the NDPS Act itself. His acquittal in the said case apart, involvement of the petitioner shows that he has been repeatedly indulging in committing the similar type of offences under the NDPS Act. So far as the present case is concerned, commercial quantity of contraband has been recovered from the petitioner. Report of Forensic Science Laboratory ('FSL' for short) has already been received, the result of which has also gone against the petitioner. Learned counsel for the State would next contend that since out of total 11 PWs, 4 PWs have already been examined and the next date of hearing before the learned trial court is 27.8.2015, conclusion of trial will not take much time. He prays for dismissal of the present petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that keeping in view the totality of facts and circumstances of the case, noticed herein above, this court is of the considered opinion that the petitioner has not been found entitled for the concession of bail pending trial. It is so said because commercial quantity has been recovered from the petitioner. As per own showing of the petitioner, he was found involved in another FIR under

the NDPS Act itself. The report of FSL has been received in the present case and result thereof has gone against the petitioner.

Coming to the order dated 15.6.2015 passed by this court, as relied upon by learned counsel for the petitioner, a perusal thereof would show that the said order is of no help to the petitioner, it being distinguishable on facts. It is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in the case of **Padmausund Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

So far as the fact situation of the present case is concerned, it is a matter of record that commercial quantity has been recovered from the petitioner and the result of the report from FSL has also gone against the petitioner. Out of 11 PWs, 4 PWs have already been examined and the next date of hearing before the learned trial court is stated to be 27.8.2015. So far as the alleged enmity part is concerned, many a times it works as a double edged weapon. However, this court would refrain itself from making any further observations in this regard, lest it should prejudice the rights of either of the parties, during the course of trial.

In view of the above and without commenting anything further on the merits of the case at this stage, no case for bail pending trial is made out.

Dismissed.

21.8.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE