

215
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-28431-2022
Date of Decision: 16.08.2022

Major Singh

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Piyush Sharma,, Advocate, for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.79 dated 18.05.2022, under Section 15 of NDPS Act (Section 29 of NDPS ACT added later on), registered at Police Station Mallanwala, District Ferozepur.

The learned counsel for the petitioner has submitted that the name of the petitioner has been nominated on the basis of disclosure statement of a co-accused which is not admissible in evidence and there is no sufficient material available with the police to connect the petitioner with the present offence.

On the other hand, Mr. Randhir Singh Thind, learned Deputy Advocate General, Punjab has stated that in the order dated 07.07.2022 it

has come that the co-accused was caught with 80 grams of poppy husk whereas the same was only a typographical mistake and in fact it was 80 Kgs. of poppy husk. He further submitted that an affidavit has been filed by Deputy Superintendent of Police, Zira, District Ferozepur in this regard and while referring to the same, he submitted that although the name of the petitioner was nominated on the basis of the disclosure statement of the co-accused but the police has got sufficient material to connect the petitioner with the present offence. He further submitted that the other co-accused namely Baljinder Singh was apprehended with 80 Kgs. of poppy husk and thereafter, the matter was investigated, then he disclosed that he was asked by the present petitioner to bring 4 bags of poppy straw from Rajasthan and deliver the same to him and it was also settled between the petitioner and the aforesaid co-accused Baljinder Singh that the petitioner will pay Rs. 32,000/- for each bag and the petitioner had also given Rs. 1,00,000/- to Baljinder Singh in advance. He further submitted that during the course of investigation call details of all the three mobile numbers were obtained from which it was found that the petitioner made three calls to aforesaid co-accused Baljinder Singh from his mobile on 18.05.2022 and apart from this, the petitioner had also called the aforesaid co-accused Baljinder Singh from his mobile number on 25.04.2022. He further submitted that the alleged quantity falls within the category of commercial quantity under the NDPS Act and the prayer of the petitioner would be hit by the bar contained under Section 37 of the NDPS Act. He further submitted that the plea taken by the learned counsel for the petitioner that the disclosure statement of a co-accused is not admissible in evidence, the same is not sustainable in view of the judgment of the Hon'ble Supreme Court in *State of Haryana Versus*

Samarth Kumar [Criminal Appeal No.1005 of 2022] since the present case pertains to the prayer for the grant of anticipatory bail and not for regular bail. The learned Deputy Advocate General, Punjab while referring to para No.11 of the affidavit has submitted that the petitioner is a habitual offender and he is involved as many as four more cases including two under the NDPS Act and the details of the same have been given in para No.11 of the affidavit filed by the State. He further submitted that the petitioner has not come to this Court with clean hands and has rather misstated and deliberately concealed the material facts from this Court. The petitioner actively concealed the pendency of the four other FIRs which have been mentioned in para No.11 of the affidavit filed by the State and therefore, on this ground also the petitioner does not deserve the concession of anticipatory bail.

I have heard the learned counsel for the parties.

In the present case the name of the petitioner has been nominated on the basis of disclosure statement made by the co-accused from whom there was alleged recovery of 80 Kgs. of poppy husk and as per the investigating agency, the petitioner had asked for supply of the same from the co-accused @ Rs. 32,000/- per bag and had also given Rs.1,00,000/- in advance to the co-accused Baljinder Singh. The details of call records were also mentioned in para No.8 of the affidavit filed by the State. The rebuttal argument raised by the learned counsel for the State that the contention of the learned counsel for the petitioner that the petitioner has been nominated on the basis of disclosure statement of a co-accused is not admissible in evidence, does carry weight in view of the judgment of the

(Supra).

Apart from the aforesaid factual position, it would also be necessary to note that the petitioner has filed the present petition by actively concealing material facts from this Court and therefore, would not deserve the concession of anticipatory bail. In para No.9 of the present petition, it has been stated by the petitioner that the petitioner is not involved in any other FIR as per the information provided to the counsel. Para No.9 of the petition is reproduced as under:-

“9. That the petitioner is not involved any other FIR as per the information supplied to the counsel”.

The present petition is also supported by an affidavit of the petitioner which is at page No.6 of the paper-book and which is a duly sworn affidavit before the notary. Para No.11 of the affidavit filed by the State would show that the petitioner is rather a habitual offender and is involved in four more cases including two under the NDPS Act and therefore, it is clear that the petitioner has concealed material facts from this Court and has not come to this Court with clean hands. Since the present petition is accompanied by an affidavit of the petitioner, ordinarily this Court could have initiated appropriate proceedings for filing false affidavit against the petitioner. However taking a lenient view, this Court is of the view that instead of initiating any such proceedings against the petitioner, the petitioner is to be burdened with some costs.

Consequently, the present petition is dismissed with costs of Rs. 15,000/-. The petitioner is directed to pay and deposit the costs in the office of the Chief Judicial Magistrate, Ferozepur and on the payment of the

same, the costs shall be further transmitted to the District Legal Services Authority, Ferozepur, Punjab. The costs shall be paid within a period of 3 months from today.

A copy of this order be sent to the Chief Judicial Magistrate, Ferozepur as well as District Legal Services Authority, Ferozepur, Punjab.

Post this case for compliance on 22.11.2022.

16.08.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No