

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

212

CRM-M-49644-2022

Date of decision : 30.11.2022

Roshni and another

Petitioners

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Amit Sharma Advocate for the petitioners.

Mr. Munish Sharma, Asstt. A.G., Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioners have filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.760 dated 19.06.2022 registered under Section 20B(ii)(C), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Sadar Hisar, District Hisar.

Reply dated 19.11.2022 by way of an affidavit of Sh.Narain Chand, HPS, Deputy Superintendent of Police, Hisar-2 has been filed in the Court today which is taken on record

Brief facts of the case are that on 19.06.2022, on the basis of a secret information, the police apprehended 02 persons, who were standing near crossing of canal of Village Gunjar. They were holding 03 plastic bags. On inquiry, they told their names as Dharampal and Gopi Ram. On search 17.5 kgs. Ganja in each bag (total 52.5 kgs.) were recovered from them. In their disclosure statements, Dharampal and Gopi Ram named the present petitioners.

Learned counsel for petitioner submits that the petitioners have been falsely implicated in the present case on the basis of disclosure statements of co-accused Dharampal and Gopi Ram which is a very weak type of evidence and except the disclosure statements of co-accused there is no other evidence against the petitioners. The petitioners were not apprehended on the spot. Nothing is to be recovered from the petitioners and their custodial interrogations are not required in the case. The petitioners are ready and willing to join the investigation.

On the other hand learned State counsel opposes the present petition on the ground that the huge quantity of 52.5 kgs. of Ganja, which falls in the category of commercial quantity, has been recovered from the conscious possession of co-accused Dharampal and Gopi Ram without any license or permit. The petitioners along with other co-accused visited Orissa to purchase the contraband. They had individually purchased 10 kgs. each of contraband and had brought the same through train at Hisar. The petitioners have actively participated in the crime. The custodial interrogation of the petitioners are required for thorough investigation of the case.

I have heard learned counsel for the parties and gone through the paper-book.

As per reply filed by the State, during investigation, disclosure statements of co-accused Dharam Pal and Gopi Ram were recorded. Co-accused Dharam Pal in his statement suffered that he is known to Raj Kumar and he has relationship with him and Raj Kumar has friendship with co-accused Uddhav Khura who used to sell Ganja.

Raj Kumar asked him to accompany him to bring Ganja from Uddhav Khura. On 04.06.2022 he, Gopi Ram, Roshani (petitioner No.1), Geena Devi (petitioner No.2), Baljeet, Ballu @ Balwan, Savitri, Raj Kumar and Bhateri gathered at Railway Station Hisar. Raj Kumar asked them that he will give Rs.25,000/- each to purchase Ganja and in lieu of that they have to pay Rs.10,000/- each extra to him. Thereafter, they reached in the house of Uddhav Khura in Orissa and purchased 100 kgs. Ganja at the rate of 2,000/- per kg. They kept Ganja in 06 bags and reached Hisar. 03 plastic bags were kept by Raj Kumar and his wife Bhateri and remaining 03 bags were kept by him and Gopi Ram. On 23.06.2022, the Investigating Agency reached at Orissa and arrested co-accused Uddhav Khura from his village. In his disclosure statement, co-accused Uddhav Khura also stated that around 15/20 days ago, co-accused Raj Kumar along with some other persons came at his house for purchasing Ganja. He sold 100 kgs. Ganja for Rs.2,00,000/- at the rate of 2,000/- per kg. to them. On 28.06.2022 co-accused Raj Kumar was arrested and on 29.06.2022 co-accused Balwan @ Ballu and Savitri were arrested. The custodial interrogation of the petitioners are required to know the name to whom the contraband was to be supplied and their involvement in such type of other cases.

The Hon'ble Apex Court in case ***State of Punjab Vs. Baldev Singh : 1999 AIR SC 2378*** has observed regarding Drug Addiction, Drug abuse and its effect on the society. The Hon'ble Apex Court in para No.3 has observed as under:-

“3. Drug abuse is a social malady. While drug addition eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit

money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Australia in 1988 was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this convention.”

The aforesaid ratio of law has also been reiterated by the Hon'ble Supreme Court recently in ***Sri Thaha Ummer Vs. Union of India, Criminal Petition No.9450/2022 decided on 09.11.2022.***

It is also settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. This view of mine finds support from the judgment of Hon'ble Supreme Court in ***Madhya Pradesh Vs. Pradeep Sharma, (2014) 2 SCC 171.***

Keeping in view the above facts as well as nature of the offence, the petitioners do not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

30.11.2022

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No