

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

(251)

CRM-M-23119-2021
DATE OF DECISION:-17.05.2023

Harbans alias Kaka

...Petitioner

vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. L K. Narang, Advocate, for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

HARKESH MANUJA, J.

(1) By way of present petition filed under Section 482 Cr.P.C. prayer has been made for quashing of order dated 01.12.2020 passed by Addl. Sessions Judge, Rohtak (Annexure P-1) whereby, the prayer made on behalf of petitioner seeking superdari of the money recovered at the time of registration of FIR in question has been declined.

(2) Reply by way of affidavit of Krishan Kumar Lohchab, Additional Superintendent of Police, Rohtak dated 10.01.2022 has been filed, the same is taken on record.

(3) The facts of the case are that FIR No.303 dated 14.05.2020 was registered at Police Station City Shivaji Colony, District Rohtak, Haryana under Sections 21, 27-A, 29 of NDPS Act with the allegations that the petitioner was apprehended while driving Splender Motorcycle bearing registration No.HR-12-AC-2105 and one bag was allegedly recovered from him carrying cash amounting to Rs. 11,37,300/-, although no contraband was recovered from him.

(4) The *challan* was presented by the investigating agency and the petitioner was granted concession of regular bail in the aforementioned FIR.

Thereafter, during pendency of the trial, petitioner moved an application seeking *superdari* of the aforementioned Rs.11,37,300/- which was recovered from him at the time of his arrest in the aforementioned FIR. The prayer made by the petitioner was declined by the Additional Sessions Judge, Rohtak, vide order dated 01.12.2020 (Annexure P-5) which has been impugned by way of present petition.

(5) Learned counsel for the petitioner submits that the investigation of the aforementioned case is already over and the petitioner has already been granted concession of regular bail and even *challan* stands filed on 10.07.2020. He further submits that the question as to whether the amount recovered from the petitioner was being used or got for purchasing or selling drugs or not is to be determined during trial which is likely to take some time and thus keeping the aforesaid money with the investigating agency is definitely going to devalue the same with the passage of time. He also submits that in order to secure the rights of the investigating agency/the prosecution, the petitioner is ready to submit any suitable security.

(6) On the other hand, the prayer made hereinabove has vehemently been opposed by learned State counsel while submitting that aforesaid amount was recovered from the petitioner at the spot and thus apparently correlated to the activities being done by the petitioner, about selling or purchasing of contraband and thus, the same cannot be directed to be released in his favour. In addition, learned State counsel also submits that the petitioner is a habitual offender as two other cases under NDPS Act, are also registered against him, though, in both the cases trial is going on.

(7) I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

(8) Once the investigation in the aforementioned FIR already stands concluded with the filing of *challan* and petitioner has been released on regular bail, the fact as to whether the cash recovered from the petitioner at the spot was a drug money or not has to be established and determined upon conclusion of trial and at this stage especially when no recovery of any banned drug was made from him. In these circumstances, lying of amount with the prosecution agency is definitely going to devalue the same, thereby causing substantial economic loss and prejudice to the rights of the petitioner who so far is merely an accused, not a convict, may be involved in two other cases as well.

(9) Moreover, the seizure of the amount recovered from the petitioner has been admittedly made under Section 68(F) of the NDPS Act, though no proceedings regarding its forfeiture as postulated under Section 68(H) thereof have been initiated even after the expiry of almost three years. In this manner, the petitioner has been deprived of his right to explain and provide information/evidence indicating the source of income or the vehicle by which the money recovered was acquired by him.

(10) In view of the facts and circumstances as well as to safeguard the interest of both the parties, present petition is allowed and the impugned order dated 01.12.2020 (Annexure P-5) is quashed with a direction to release the aforesaid amount lying with the investigating agency in favour of the petitioner, subject to his furnishing of security to the satisfaction of the trial Court.

(10) The aforesaid amount shall be released in favour of the petitioner against coloured photocopies of the currency notes to be retained by the prosecution against due acknowledgment by the petitioner as regards their numbers, along with an undertaking that he will not dispute the identity of

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the currency notes during trial.

17.05.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No