

CRM-M-21510-2023 (O & M)
(218)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-21510-2023 (O & M)
Date of decision: 18.08.2023

Shanshah

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Navkiran Singh, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of the regular bail to the petitioner in FIR No.178 dated 16.05.2009 under Section 20 of the NDPS Act, 1985 (later on challan filed under Section 120-B IPC) registered at Police Station Sadar Sonipat, District Sonipat.

2. That briefly stated, the facts involved in the present case are that on 15.05.2009. at about 11.30 a.m., ASI Abhimanyu was present at CIA Staff, Sonipat, when Shanshah (petitioner) son of Ashok and Dilshad (acquitted) son of Shamsheer came to the CIA Staff, Sonipat and asked about Khatana Sahab (Inspector Yashpal Khatana, Incharge, CIA Staff, Sonipat),

CRM-M-21510-2023 (O & M)
(218)

::2::

transferred to Rohtak District and, thereafter, both of them i.e. Shanshah and Dilshad went away. However, after some time both of them again came there and told ASI Abhimanyu that Anil, son of Ramphal and Ramphal, son of Sube Singh, residents of village Tharu, District Sonipat were indulging in dealing in Charas and on that day i.e. on 15.02.2009, they (Anil and Ramphal) would receive a supply of Charas and as and when the said Anil and Ramphal would receive Charas, they would inform him (ASI Abhimanyu). Upon hearing this, ASI Abhimanyu gave his mobile No.9896674303 to them and, thereafter, both of them went away. At about 11.30 p.m.. ASI Abhimanyu received a phone call from mobile No.9813992644 and Shanshah disclosed that Anil and his father Ramphal had already received the Charas, which had been kept concealed by them under cow dungs cakes (Uple) on the roof of their house. ASI Abhimanyu accompanied by his fellow police officials rushed to village Tharu, District Sonipat in a Government vehicle bearing No.HR-10F-9373 and reached village Tharu at 12.10 a.m. (midnight), where the said Shanshah and Dilshad met the police officials outside the village. Thereafter, Shanshah accompanied the police party and got stopped their vehicle near the house of Anil and signaled towards the house of Anil and disclosed that Charas was concealed on the roof of the house. If a raid was conducted, the narcotic substance could be recovered from the roof of the house of Anil under the cow dung cakes. Thereafter, Shanshah went away. The police officials reached at the house of Anil and called Anil and Ramphal, who opened the gate of their house. On hearing the noise, Jai Bhagwan (PW-4) son of Jage

CRM-M-21510-2023 (O & M)
(218)

::3::

and Ishwar son of Dayachand reached the spot and in their presence the police party told Ramphal and Anil that the police party was to search the roof of their house. Thereafter, the roof of their house was searched in the presence of other persons present at the spot and during the search, the police party again received a phone call from Shanshah, who asked from ASI Abhimanyu as to whether Charas had been recovered or not. ASI Abhimanyu disclosed to him that the search was going on and then Shanshah disclosed that Charas was kept concealed alongwith the back wall of the roof in the cow dung cakes under the wax-paper. Thereafter, ASI Abhimanyu searched for the said cow dung cakes, in which Charas was recovered. On enquiry, Ramphal and Anil , both showed their ignorance about the said Charas. Thereafter, the other respectable persons of the village present at the spot disclosed to the police that the said Ramphal and Anil were not involved in dealing in Charas and the recovered Charas must not be belonging to them and this act had been done by someone else. The said persons also disclosed that Ramphal and Anil were having litigation with the family of Parkash, as son of Parkash namely Naresh had committed rape upon daughter of Khushi Ram, the brother of Ramphal and they used to threaten to implicate them in a false case for not compromising the said rape case. The recovered narcotic substance was weighed and it was found to be 980 grams. Since, the facts were found suspicious, Shanshah and Dilshad were called at the spot, but they did not appear before the police till 8.00 a.m. and on being contacted repeatedly, they kept on stating that they were reaching shortly. However, they did not come there. They were also

CRM-M-21510-2023 (O & M)
(218)

::4::

searched for in the village but they were not found. Thereafter, information was sent to the police station, on the basis of which the instant FIR was registered.

During investigation, efforts were made to apprehend Shanshah (petitioner) and his co-accused/Dilshad. As they could not be apprehended, they were declared as proclaimed offenders vide order dated 22.04.2010.

The co-accused Dilshad was arrested on 26.12.2012 and on interrogation, he suffered a disclosure statement and while admitting his guilt, stated that in order to falsely implicate the family of Ramphal in a criminal case, after hatching a conspiracy with Shanshah, they had brought Charas from somewhere and concealed the same on the roof of the house of Ramphal as Naresh son of Parkash was confined in jail for committing rape on Sarita, daughter of Khushi Ram and the said Charas was concealed on the roof of house of Ramphal to pressurize Khushi Ram to compromise in the rape case.

After completion of the investigation, the report under Section 173 Cr.P.C. was submitted in the Court against accused-Dilshad on 04.01.2013. He faced trial and was acquitted by the Court of Additional Sessions Judge, Sonipat vide judgment dated 18.11.2015.

Thereafter, on 26.09.2022, the petitioner was arrested and suffered a disclosure statement on the lines of his co-accused Dilshad. Subsequently, a supplementary challan was submitted against the petitioner.

3. The learned counsel for the petitioner contends that there is absolutely no evidence that the petitioner and his co-accused Dilshad had

CRM-M-21510-2023 (O & M)
(218)

::5::

concealed the Charas on the roof of the house of the Ramphal. The Trial Court had acquitted the co-accused/Dilshad while recording a finding to this effect as well. In the trial against the petitioner, the witnesses of the recovery of the contraband, namely, PW-4/Jai Bhagwan and PW-5/Khushi Ram have not supported the prosecution case and have turned hostile. As the petitioner was in custody since 07.09.2022 and as many as 13 prosecution witnesses still needed to be examined out of the 27 total witnesses cited in the list of witnesses, he was entitled to the concession of bail.

4. The learned counsel for the State while referring to the status report dated 17.08.2023 contends that the petitioner had been absconding in the present case since the very inception and came to be arrested only in September, 2022. Therefore, he was not entitled to the concession of bail. He, however, concedes that the case of the petitioner is similar to that of his co-accused/Dilshad who has been acquitted, two material witnesses of the recovery have turned hostile in the trial of the present case and 13 of the 27 prosecution witnesses still need to be examined.

5. I have heard the learned counsel for the parties.

6. Admittedly, the identically situated co-accused of the petitioner, namely Dilshad faced trial and has since been acquitted. Whether the evidence recorded in the case of the petitioner would be sufficient to affix his guilt shall be a matter of adjudication during the course of the trial. Two of the material prosecution witnesses have been examined and have not supported the prosecution case. The petitioner is in custody since 07.09.2022

CRM-M-21510-2023 (O & M)
(218)

::6::

and 13 of the 27 prosecution witnesses still need to be examined. Therefore, the trial of the present case is not likely to be concluded anytime soon. In this situation, the further incarceration of the petitioner is not required.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Shanshah, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case/crime other than the present one.

9. In addition, the petitioner (or someone else on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

August 18, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No