

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(218)

Vikas @ Vicky

2023:PHHC:071496
CRM-M-24236-2023
Date of Decision: 17.05.2023
--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Sumit Chahal, Advocate for the petitioner.

Mr. B.S. Virk, Sr. DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.515 dated 29.9.2022 under section 20(b) of NDPS Act (Section 29 of NDPS Act added later on) registered at Police Station, Kaithal City, District Kaithal.

As per factual matrix, the police party while on patrolling duty received a secret information that Vikram @ Vicky had taken shop of Mahavir near truck union on rent and he was indulging in the business of selling Ganja Phool Patti and if raid is conducted at Vikram's shop then a big quantity of Ganja Phool Patti can be recovered. Finding the secret information reliable, information was sent to the concerned police station under section 42 of NDPS Act and a raid party was constituted. Subsequent to that police party tried to join an independent witness, however, nobody showed his willingness to join. Thereafter, the police party reached the shop which was pointed out by the secret informer and found a person coming out from the shop carrying a bag in his hand. He was apprehended on the spot. On asking he disclosed his name as Vikram son of Jagmal. It was

suspected that he was carrying contraband in the bag. He was given offer under Section 50 of NDPS Act for his personal search. He gave the consent to be searched before the Magistrate. Tehsildar, Kaithal was called at the spot and the search of the bag being carried by Vikram was carried out. The same was found containing 1kg 100 gm of Ganja Phool Patti. The accused failed to show any licence to carry the contraband and accordingly, present FIR was registered against him. Samples of the contraband recovered were taken and sent to FSL.

During his interrogation accused Vikram disclosed about the accused Vikas @ Vicky and stated that he had purchased the contraband from him. Resultantly, Vikas @ Vicky i.e. the present petitioner was also arrayed as an accused in the present FIR. He was arrested on 22.2.2023. He approached learned Judge, Special Court, Kaithal for grant of bail, however, after hearing the parties, the same was declined vide order dated 1.5.2023. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in the present case. He submits that neither the petitioner was named in the FIR nor any recovery was effected from him. He submits that the alleged recovery of 1 kg 100 gram Ganja Phool Patti was effected from co-accused Vikram @ Vicky. He submits that petitioner was arrayed as accused in the present FIR only on the basis of disclosure statement made by co-accused Vikram @ Vicky. He submits that even otherwise recovery effected from the co-accused weighed 1kg 100 grams of Ganja Phool Patti is marginally above the small quantity. He submits that weight of the contraband included the weight of bag also. It is submitted that the disclosure statement made by co-accused is hit by

Section 27 of Evidence Act. Counsel fairly submits that petitioner is involved in some more cases also but he has been granted bail in those cases. He submits that investigation in the case is complete and challan stands presented. He submits that in the overall facts and circumstances of the case petitioner deserves to be granted bail.

On the other hand, learned State counsel has vehemently opposed the submissions made by counsel for petitioner. He submits that though petitioner has been arrayed as an accused on the basis of disclosure statement made by co-accused Vikram @ Vicky, however, petitioner is a habitual offender as he is involved in as many as 7 more cases out of which 5 pertain to NDPS Act. It is submitted that petitioner is on bail in those cases. State counsel submits that investigation in the case is complete, challan stands presented and case is fixed for framing of charges before the Trial Court on 23.5.2023.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Admittedly, petitioner is behind bars since 22.2.2023. As per case of the prosecution petitioner was arrayed as accused in the present case on the basis of disclosure statement made by co-accused Vikram @ Vicky from whom 1 kg 100 grams of Ganja Phool Patti was recovered. The recovered quantity of 1 kg 100 grams of Ganja Phool Patti includes the weight of bag also. Whether the recovered quantity is small or commercial quantity is a debatable point which would be decided after conclusion of the trial. As submitted by learned State counsel investigation in the case is complete, challan stands presented and the case is fixed for framing of charges. Though, the petitioner is involved in some more cases of the

similar nature, however, he has been granted bail in those cases. The veracity of the allegations levelled against the petitioner would be assessed by the Trial Court only upon conclusion of the trial. This court would refrain itself from commenting on the merits of the case, as the allegations and counter allegations would be assessed only after evaluation of the complete evidence to be led by both the sides before the Trial Court. The trial would take sufficiently long time in its conclusion.

In the totality of facts and circumstances and without making any observation on merits, present petition is allowed. Petitioner be enlarged on bail on her furnishing bail/surety bonds subject to the satisfaction of Trial Court/Duty Magistrate, concerned. Nothing stated herein shall be treated as an expression on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

17.05.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No