

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

222

CRM M-24263 of 2023

Date of Decision: July 13, 2023

Naushad

...Petitioner

Vs.

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Kunal Dawar, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has moved the present petition under Section 439 Cr.P.C. with a prayer to grant the concession of regular bail to him in case FIR No.729 dated 19.11.2022 under Section 20 of the Narcotics Drugs and Psychotropic Substance Act, 1985 (hereinafter to be referred as the 'the NDPS Act') and Section 120-B of IPC registered at Police Station City, Palwal District Palwal, Haryana (Annexure P-1).

2. The FIR in the present case was got registered on the basis of the statement made by ASI Kaushal. As per the complainant on 19.11.2022, he alongwith other police officials was present at Bus Stand Palwal for patrolling and crime prevention and in the meantime, a secret informer informed that Jakruddin @ Salman resident of Mirpur, who deals in the sale of Ganja, was standing near the drain to sell Ganja. If the raid was conducted immediately, he

could be apprehended at the spot. Believing the information to be correct, the complainant alongwith other police officials reached near the drain and found that one young boy was standing there and was carrying a bag in his hands. On noticing the police party, he started walking briskly and the said person was apprehended with the help of other police officials. On inquiry, he disclosed his names to be Jakruddin @ Salman resident of Mirpur. Suspecting that he was carrying some contraband, a notice under Section 50 of the NDPS Act was issued to him and he expressed his desire to get his search conducted in the presence of a gazetted officer. After some time, Ratanpal, SDO, Public Health was joined with the raiding party and on search, one 1 Kg and 925 grams of Ganja leaves (Patti) were recovered from him and were duly sealed. Jakruddin @ Salman was questioned by the police and he informed the police party that he had received said Ganja leaves from Naushad son of Abdul Rahim, petitioner. Thus, with these broad averments, the FIR in the present case was registered against Jakruddin @ Salman and Naushad, petitioner.

3. Learned counsel for the petitioner contends that he has been falsely implicated by the police with some ulterior motive. In fact, brother of petitioner, namely, Firoj son of Abdul Rahim had filed a Criminal Complaint No. 137 of 2021 dated 364-A, 384, 387, 388 and 506 IPC against the police officers of Police Station City Palwal for kidnapping, extortion and threatening to implicate the family

members in multiple false cases and the said complaint Annexure P-2 is pending in the Court of learned Judicial Magistrate, Palwal, for 20.10.2023. Learned counsel further contends that in view of the provisions contained in Section 2(iii)(b) of the NDPS Act, Ganja leaves (Patti) does not fall within the definition of Ganja. He further contends that Jakruddin @ Salman, from whom, the contraband was recovered was arrested at the spot and has been granted the concession of regular bail vide order dated 03.12.2022 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Palwal. He further contends that he was arrested in the present case on 07.04.2023 and total 13 witnesses have been cited by the prosecution. Thus, conclusion of the trial may taken quite a long time and his further incarceration would serve no meaningful purpose.

4. On the other hand, the learned State counsel has vehemently opposed the prayer made by the present petitioner on the ground that he had supplied the contraband to Jakruddin @ Salman and does not deserve the concession of bail. Still further, 08 more cases were also registered against the present petitioner and he is a habitual offender.

5. I have heard the learned counsel for the parties and perused the case file very carefully.

6. It is not in dispute that the petitioner in the present case was arrested on 07.04.2023. The prosecution has relied upon the statements of 13 witnesses and the examination of the said witnesses

by the learned trial Court may take quite a long time. Apart from that, the learned Counsel has relied upon the provisions of the Section 2(iii)(b) of the NDPS Act to contend that the Ganja leaves do not fall within the definition of Ganja and the trial Court is yet to adjudicate as to whether the offence under Section 20 of the NDPS Act is made out against the petitioner or not. Apart from that, the entire prosecution case is based on the testimonies of official witnesses and the petitioner cannot be in a position to influence the witnesses of the prosecution.

7. The law is well settled that each case for bail of an accused has to be considered on the strength of merits of the said case. Even though, the criminal antecedents of an accused may be one of important considerations, while adjudicating a petition on merits for grant of bail. However, merely because of the fact that the petitioner is involved in some other cases cannot be the sole ground to confine the petitioner in jail in perpetuity. The power to adjudicate upon the liberties of an individual, while considering the bail application, cannot be used as a means of inflicting the sentence on an accused. The gravity of the evidence, allegations, nature of incriminating evidence collected during the course of investigation by the police, chances of influencing the witnesses or tampering with the evidence are primarily the considerations with the Court, which decide the bail application. Apart from that, the Court has to look into the period of custody and the stage of the trial as one of the prime

considerations. However, the bail to a petitioner in a particular case cannot be denied solely on the ground that several other cases are pending against him, even though, the petitioner has been able to make out a case for grant of bail in the case in hand.

8. The Hon'ble Supreme Court in the matter of **Prabhakar Tewari Vs. State of U.P., and another 2020(1) R.C.R. (Criminal) 831** has held that the pendency of several criminal cases against the accused cannot be the basis to refuse the prayer of bail. Similar observations have been made by the Hon'ble Supreme Court in the matter of **Maulana Mohd. Amir Rashadi Vs. State of U.P., and another 2012(1) R.C.R. (Criminal) 586.**

9. In view of the above, without commenting any further on the merits, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate/CJM concerned.

10. Needless to say that above observations are made only for the limited purpose of deciding the bail application and may not be construed as an expression of opinion on the merits of the case.

July 13, 2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

:

Yes/No