

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

226

CRM M-56630 of 2023

Date of Decision: 04.12.2023

Ajay Kumar @ Kala

...Petitioner

Versus

State of Haryana

... Respondent

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

Present : Mr. Rajesh Khandelwal, Advocate for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.117 dated 25.02.2021 registered under Sections 20, 25, 27 and 61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, '**the NDPS Act**') and Section 25 of Arms Act (Section 420 IPC added later on during investigation) at Police Station Bhiwani Sadar, District Bhiwani.

2. A short reply by way of an affidavit of the Deputy Superintendent of Police, Bhiwani, has been filed on behalf of the respondent-State and the same is taken on record.

3. The FIR in the present case was registered on the basis of information given by Inspector Bhagwan and the relevant contents of the FIR have been reproduced below:-

“To, SHO PS Sadar Bhiwani. Today during intervening night of 24/25.02.2021, I, Insp.Incharge CIA-2 Bhiwani along with EASI Sunder 374, HC Ramdia 82, EHC Narender 616 by riding Government vehicle bearing registration No.HR03-T- 8710 which is driven by EHC Vikas 156 was present at Mundal Bus Stand in area of PP Mundal, PS Sadar Bhiwani for night patrolling and to stop criminal activities and in the meantime I received secret information from secret informer that narcotic substance is being brought in one Tempo Traveller No.HR61-C-8631 on Rohtak Hisar Road from Rohtak side. Believing this information to be true, notice u/s 42 NDPS was prepared and was sent to senior officers for information and at PP Mundal by the hand of EHC Narender 616. The contents of notice u/s 42 NDPS Act are as under:-

Today during intervening night of 24/25.02.2021 I, Insp.alongwith EASI Sunder 374, HC Ramdia 82, EHC Narender 616 by riding Government Vehicle bearing registration No.HR03-T-8710 which is driven by EHC Vikas 156 was present at Mundal Bus Stand in area of PP Mundal, PS Sadar Bhiwani for night patrolling and to stop criminal activities and in the meantime, I received secret information from secret informer that narcotic substance is being brought in one Tempo Traveller No.HR61-C-8631 on Rohtak Hisar Road. At receipt of this information, notice u/s 42 NDPS is prepared and is being sent to senior officers for information and at PP Mundal by the hand of EHC Narender 616. I alongwith co-employees by riding Government vehicle and by taking along HC Rajpal 630

came at Rohtak Hisar Highway towards Village Bandaheri above Mundal Bridge and laid naka (barricading) and were checking incoming vehicles. In the meantime, one Tempo Traveller No.HR61-C-8631 was coming from Rohtak side at very high speed and on coming near naka (barricading) it was signaled to stop but the person sitting on driver seat suddenly tried to run his vehicle over police party with intention to kill and the person sitting behind driver seat fired firearm shot at police party, which missed police party and hit in standing nearby Government vehicle No.HR03-T-8710. Whereupon, I gave information of this incident to co-employees by making phone call from my phone and asked them to pass message to Control Room Bhiwani for sending B.T. for laying naka (barricading) and thereafter, we gave retaliatory fire in self-defence and to stop the above mentioned vehicle, but the fire missed the tyre of moving vehicle and passed through rear windshield and hit in right arm of person sitting behind driver seat of Tempo Traveller. Driver was about to flee away and I with the help of co employees apprehended the driver and inquired him about his name and address and he disclosed his name as Pardeep; son of Shamsher resident of Ladwa, District Hisar and the person sitting at back seat was apprehended and was inquired about his name and address and he disclosed his name as Ajay son of Ishwar resident of Khairi. As he was hit with bullet in his right arm, private vehicle was arranged and above mentioned Ajay alongwith HC Ramdia 82 was sent to Civil Hospital Bhiwani for medical treatment and

the person sitting on driver seat above mentioned Pardeep was informed with notice u/s 50 NDPS Act.....”

As per the case of the prosecution, the search of the vehicle was conducted and after completion of the formalities, 320 kgs and 150 grams Ganja was recovered from the said vehicle.

4. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case. The recovery was made from the vehicle, without following the mandatory provisions of law. He further contends that no notice under Section 50 of the NDPS Act had been served on the petitioner and nothing was recovered from him. Still further, no independent witness was joined at the time of the recovery and even as per the FSL report, 320 Kgs and 150 grams Ganja was recovered from the vehicle and the recovered material does not fall under the NDPS Act. The petitioner was arrested on 02.03.2021 and is in custody since then. No prosecution witness has been examined so far by the prosecution and further custody of the petitioner will not serve any meaningful purpose.

5. On the other hand, learned State counsel has vehemently opposed the prayer made by the petitioner on the ground that the petitioner had earlier applied for grant of bail under Section 439 Cr.P.C. and the said petition was withdrawn by the petitioner on 1.12.2021. He further contends that the petitioner had filed another petition under Section 439 Cr.P.C., i.e., CRM M-17704-2022 and vide

order dated 13.03.2023 (Annexure P-7), this Court had rejected the prayer made by the petitioner by passing a detailed order. Learned State counsel submits that there is no change of circumstance after 13.03.2023 and the petitioner does not deserve the concession of bail.

6. I have heard learned counsel for the parties and perused the record.

7. The petitioner has filed the third petition under Section 439 Cr.P.C. with a prayer to grant him concession of bail. However, his last bail application was dismissed by this Court vide order dated 13.03.2023 (Annexure P-7) and this Court had dealt with all the submissions raised on behalf of the present petitioner. After 13.03.2023, there was no change of circumstance and the petition deserves dismissal on this score only.

8. Apart from that, even from the case of the prosecution, it is apparent that the local police had set up a picket and started checking the vehicles. In the meantime, a Tempo Traveller vehicle came from Rohtak side and the police tried to stop it. On this, Ajay Kumar @ Kala, present petitioner, fired a gunshot towards the police party. However, the police party also fired on the vehicle in self-defence and one bullet had hit the right hand of Ajay Kumar @ Kala. Thereafter, the vehicle was got stopped by the police and 320 kgs and 150 grams of Ganja as well as a country made pistol, one live cartridge and two empty cartridges were recovered from the present petitioner. Thus, the presence of the petitioner at the place of

occurrence was there. Still further, even though, the petitioner is in jail since 02.03.2021, still, he is not entitled to the concession of bail in view of the gravity of the matter. Apart from that, 320 kgs and 150 grams Ganja falls within the ambit of “commercial quantity” as per the Schedule appended to NDPS Act and the rigors of Section 37 of the NDPS Act would apply. Even otherwise, this Court has already dealt with all the submissions raised on behalf of the present petitioner and vide order dated 13.03.2023 (Annexure P-7), the Court has already rejected the submissions made by the petitioner. Thus, no fresh ground is made out for grant of bail to the petitioner and the petition is, accordingly, dismissed.

9. Since, the petitioner is in custody since 02.03.2021, the trial Court is directed to conclude the trial proceedings expeditiously, preferably, within a period of six months from today.

10. The Registry of the Court is directed to communicate this order to the trial Court forthwith.

04.12.2023	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No