

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3130-2024
DECIDED ON: 20.01.2024

MAYA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Raman Chawla, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., for grant of anticipatory bail to the petitioner in FIR No.352 dated 18.05.2023, under Sections 20(b)(ii)(C), 20(B)(ii)(C) of NDPS Act, 1985 (Section 27-A of NDPS Act added later on) registered at Police Station City Hansi, Police District Hansi, District Hisar.
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as an accused merely on the basis of disclosure statement suffered by other co-accused persons, wherein her son has also been shown to be involved in this illegal act of transporting NDPS. Moreover, no recovery whatsoever has been effected from the possession of the petitioner and he was not present at the spot.
3. As per the arguments raised on behalf of the petitioner, much stress has been laid on the fact that her son is also named in the FIR on the basis of disclosure statement made by another co-accused, whereas further disclosure

statements by one or the other accused persons were being recorded during the course of investigation, after the arrest of main accused at the time of effecting initial recovery.

4. Notice of motion.

5. On the asking of Court, Mr. Baljinder Singh Virk, Sr. DAG Haryana accepts notice on behalf of respondent-State, who informs the Court that this contraband was smuggled from the State of Orissa under the pretext of having a pilgrim tour to Jaganathpuri and there is sufficient link evidence connecting the petitioner to the commissioning of offence at this stage and to reach a logical conclusion, custodial interrogation of the petitioner is considered to be must.

6. Having heard learned counsel for both the parties.

7. As per the allegations a huge quantity of ganja i.e., 20.800 Kg was recovered from the two co-accused namely Vishwas and Chattar Pal. Thereafter, they suffered their disclosure statement implicating one another co-accused namely Prem, who had brought the huge quantity of ganja. During the investigation, another huge quantity of ganja 57.100 Kg was also got recovered from Vishwas and Chattar Pal. In this manner a total 77.900 Kg was recovered from the co-accused persons namely Vishwas and Chattar Pal. Later on, Prem suffered another disclosure statement implicating the 7 another co-accused persons including the petitioner with whom he has purchased this huge quantity of ganja from other State, which is sufficient for this Court to infer that all the co-accused persons including the present petitioner seems to have a nexus in purchase of the contraband from a different State and to supply the same in Punjab & Haryana.

8. The drug menace in both the States is writ large and large number of youth are falling prey at the hands of such mafia. The role of the petitioner is not that of law abiding citizen as is evident from the record before this Court. With deep

concern it is of utmost importance at this stage to say that clandestine smuggling of narcotics drugs and psychotropic substance has led to drug addiction among a sizeable section of the public. It has to be borne in mind that in a murder case the accused commits murder of one or two persons, while those persons who are dealing in a narcotic drugs are instrumental in causing death or inflicting death blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely obviously for large stake and easy illegal profit making mode. In the present prevailing scenario, the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti drug justice is a criminal dimension of social justice as drug addiction forms vitals of the society alongwith illicit money generation by drug trafficking.

9. In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

[37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial

*quantity] shall be released on bail or on his own bond unless—
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]

10. Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

11. Other than the aforesaid discussion it is Section 35 of NDPS Act which raises a presumption of culpable mental state of mind for which no explanation is forthcoming from the petitioner in this regard. Section 35 of NDPS Act reads as under:

“35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable

doubt and not merely when its existence is established by a preponderance of probability.”

12. Having heard the learned counsel and examining the facts and circumstances at this juncture, there is no material evidence to establish innocence of the petitioner-accused as such, the question of admitting him on bail does not arise at all.

13. There is no question or doubt to the recovery effected i.e., 150 kg ganja, which is alleged to have been planted, but this Court has no reason to believe this argument, as such huge quantity by no stretch of imagination can be a case of false implication and of a planted recovery in any manner.

14. In the light of above, considering the huge quantity of the contraband and the manner in which the *modus operandi* is evident, wherein the petitioner is actively involved being a supplier of the said contraband, this petition deserves to be dismissed having no merits. Hence, the same stands dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

20.01.2024

Meenu

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>