

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.104

CRM-M-8772-2024
Date of decision:26.02.2024

Sunny

...Petitioner

Versus

State of Haryana

...Respondent(s)

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

Present: Mr. Lupil Gupta, Advocate for the petitioner.
Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S. SHEKHAWAT, J.

1. The petitioner has filed second petition under Section 438 Cr.P.C. for grant of pre-arrest bail to him in case FIR No.334 dated 25.12.2023 registered under Sections 21-B/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Radaur, District Yamuna Nagar.
2. Learned counsel for the petitioner contends that the petitioner had been falsely involved in the present case on the basis of disclosure statement suffered by his co-accused. Even the police had recovered 11.27 grams of heroin from his co-accused Saqhil @ Barwal and the petitioner had no concern with the said recovery from his co-accused. Apart from that, the petitioner had never indulged in the similar activity in the past. Further, there was no direct or indirect evidence to connect the petitioner with the alleged recovery.

3. I have heard the learned counsel for the petitioner at length and perused the case file minutely.

4. It is apparent that the petitioner had earlier filed a petition under Section 438 Cr.P.C., with a prayer to grant him concession of anticipatory bail in CRM-M-6065-2024, and the arguments were addressed by learned counsel for the petitioner at length. However, when this Court was not inclined to grant the concession of anticipatory bail, learned counsel for the petitioner had withdrawn the petition. Now, after a period of about one week, the second petition has been filed by the petitioner for grant of concession of anticipatory bail. Even, in the entire bail petition, the petitioner has not mentioned any changed circumstances. Even, the same arguments has been repeated by learned counsel appearing on behalf of petitioner.

5. The Hon'ble Supreme Court has held in the matter of **“Kalyan Chandra Sarkar Versus Rajesh Ranjan @ Pappu Yadav”**, 2005 AIR (SC) 925 as follows:-

“16. The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, but the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reagitated on the same grounds, as the same it would lead

to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

17. The decision given by a superior forum, undoubtedly, is binding on the subordinate fora on the same issue even in bail matters unless of course, there is a material change in the fact situation calling for a different view being taken. Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Therefore, we are not in agreement with the argument of learned counsel for the accused that in view the guaranty conferred on a person under Article 21 of the Constitution of India, it is open to the aggrieved person to make successive bail applications even on a ground already rejected by courts earlier including the Apex Court of the country...”

6. In view of the above discussion, the second petition under Section 438 Cr.P.C., is not maintainable as learned counsel for the petitioner has failed to point out any change in the circumstances in the present case. Thus, the present petition is ordered to be dismissed with cost of Rs.20,000/-, which shall be deposited by the petitioner in the account of “Punjab and Haryana High Court Bar Clerks Association”, within a period of two months from today.

(N.S. SHEKHAWAT)
JUDGE

26.02.2024
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO