

(277)
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-22874-2023
Date of Decision: 06.05.2024

VIJAY PAL

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Lakshay Bector, Advocate
for the petitioner.

Mr. Vinay Kumar, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 13.04.2023 (Annexure P-4) passed by the Special Judge, Ludhiana whereby the application moved by the petitioner to return his articles recovered during personal search of the petitioner in FIR No.64 dated 01.08.2022 (Annexure P-1) registered under Section 18 of the NDPS Act at Police Station Division No.1, District Ludhiana has been dismissed.

2. The brief facts of the case are that an FIR No.64 dated 01.08.2022 (Annexure P-1) under Section 18 of the NDPS Act, P.S. Division No.1, District Ludhiana came to be registered against the petitioner when he was found in possession of 1kg 500 grams of opium.

3. During the course of his personal search, one revolver 32 bore along with its original license, 45 cartridges and one mobile phone along with the SIM Card came to be recovered.

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4. An application was moved seeking release of all the recovered articles. The Trial Court ordered the release of the mobile phone and SIM Card but declined the request of the petitioner to return his licensed weapon on the grounds that the petitioner did not have a valid licence as the licence had got expired on 11.03.2023. The copy of the order dated 27.01.2023 is attached as Annexure P-3.

5. Thereafter, the petitioner once again approached the Trial Court for release of his weapon after getting his licence removed. The prosecuting agency did not object to the return of the same. However, the Trial Court dismissed the said application vide order dated 13.04.2023 which is attached as Annexure P-4.

6. The aforementioned order dated 13.04.2023 (Annexure P-4) is under challenge in the present petition.

7. The learned counsel for the petitioner contends that the impugned order had been passed without considering the fact that the licensed weapon was required for the personal safety of the petitioner. There was no connection between the weapon the release of which was sought and the FIR in question. The State had no objection to the return of the weapon to the petitioner. In fact, the impugned order had been passed in a mechanical manner.

8. On the other hand, the learned State counsel while referring to the reply dated 20.09.2023 contends that as the petitioner had committed a heinous crime there was every possibility that he would threaten the prosecution witnesses in case the weapon is returned to him.

9. I have heard the learned counsel for the parties.

10. An examination of the facts and circumstances of this case would reveal that the petitioner came to be arrested in a case under the NDPS Act. During the course of his personal search, the weapon, ammunition and a licence came to be recovered. Though, the prayer of the petitioner for the release of the weapon had not declined initially on account of his licence having expired, subsequently, the second application was moved after he had got the licence renewed. This application has been declined in a mechanical manner. In fact, the State had raised no objections if the licenced revolver was returned to the petitioner. The finding that the petitioner would threaten witnesses is far-fetched inasmuch as all the prosecution witnesses are official in nature. Even otherwise, the return of the weapon cannot be declined on the supposition that the witnesses would be threatened.

11. In view of the aforementioned discussion, the present petition is allowed. Therefore, the order dated 13.04.2023 (Annexure P-4) passed by the Special Judge, Ludhiana stands quashed.

12. The weapon and the ammunition are ordered to be released to the petitioner on conditions to be imposed by the Trial Court.

(JASJIT SINGH BEDI)
JUDGE

06.05.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No