



IN THE PUNJAB AND HARYANA HIGH COURT
CHANDIGARH

CRM-M-39267-2024
Date of Decision:13.08.2024

RASHID

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Kumar, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

Relief Sought

1. Jurisdiction of this court has been invoked under section 482 of
Bhartiya Nagrik Suraksha Sanhita, 2023 for grant of Anticipatory bail to the
petitioner in FIR No.0233 dated 12.07.2024 (Annexure P-1) registered under
Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police
Station Murthal, District Sonipat, Haryana.

2. Case of the prosecution as narrated in the FIR is as follows :-

*‘To, SHO, PS Murthal, District Sonipat, Jai Hind. Today I
ASI along with Head Constable Rohit 1969/SPT, HC Anil No. 1749 and
SPO Jasbir 504 in a government vehicle Bolero No. HR-10GV-6115 with
driver Manoj HKRN left the PS Murthal at around 05.00 PM for
patrolling carrying a laptop, printer and investigation bag. While
patrolling through GT Road, at around 06.30 PM, I was present on GT
Road, Murthal, Dhaturi, Malikpur Road, where the informant met and*



informed that Dharam Pal son of Ram Singh resident of Village Chopra, Maheshpur, District Bagpat, Uttar Pradesh at present residing as tenant in Daturi, Private Company Daturi, Police Station Murthal, Sonipat, who works of selling ganja and today, he is wearing checked white odd shirt and black pant underneath and riding on a motorcycle bearing No. UP-17-V-9607 mark Plantin Bajaj is carrying a white coloured plastic bag having the drug ganja inside it, trying to sell it. If a sudden raid is conducted then he can be caught along with ganja. The information which is reliable/possible, notice under Section 42 of NDPS Act was prepared separately. The information is being sent through HC Rohit Kumar 1969/SPT in Police Station Murthal for registration in daily diary. The report should be recorded in a daily diary and the duplicate of the same should be informed and the officer should be informed about the whistle blower and after leaving the informer here, I ASI told my fellow employee about the informer and left for Dhaturi Malikpur road. At around 06.40 PM, I along with fellow employee reached at Dhaturi Malikpur Road while searching for address. After the surveillance, as per the information given by informer, a person was seem standing in a checked shirt with black bottom and black pant and the motorcycle bearing no. UP-17-V-9607 mark Platina Bajaj along with white coloured plastic bag having drug inside it, who while seeing the police party, tried to start the motorcycle, to whom, myself ASI along with the help of fellow companions apprehended him at about 07.00 PM and asked him about his whereabouts, who disclosed his name as Dharampal son of Ram Singh resident of Village Chopra, Maheshpur, District Bagpat, Uttar Pradesh presently residing as tenant at Dhaturi Private Company, Dhaturi, Police Station Murthal, Sonipat. That I ASI introduced myself to him and asked him that he has suspicion of some intoxicant substance in the white coloured bag, which he was in possession, which comes under the NDPS Act. You have legal right to get your search made in front of nearest Magistrate Sahib or some Gazetted Officer and a notice under Section 50 of NDPS Act was given separately to him. Upon which, above Dharampal and witnesses appended their signatures. After thinking for about 5/10 minutes, Dharampal himself



said that he wants to get his search done in front of a magistrate or a gazetted officer. The reply of notice under Section 50 of NDPS ACT was prepared separately, on which, Dharampal and the witnesses had appended their respective signatures. That myself called Duty Magistrate Shri Sandeep Punia ASST EXCISE TAXATION OFFICER SONIPAT (AETO) appointed by DC Camp Office Sonipat from his mobile number 9050828453 on the mobile number 9416256784 of the Duty Magistrate at around 7.40 PM. Time after time, at around 8.10 PM. Shri Sandeep Punia ASST EXCISE TAXATION OFFICER SONIPAT (AETO) Duty Magistrate/Gazetted Officer came and asked the name of the person Dharampal, then the person gave his name as Dharampal, son of Ram Singh, resident of village Chopra Maheshpur, District Baghpat, Uttar Pradesh, presently as tenant at Dhaturi Private Company Dhaturi Police Station Murthal, Sonipat and I ASI requested Ashu son of Dayannad, resident of village Dhaturi, who was present at the spot, to become a witness to the spot, to which Ashu expressed his consent. Duty Magistrate sir searched myself ASI. After the search was carried out, ordered to myself ASI to search Dharampal and check the white colored bag he was carrying in his hand. Whose memo of search and order of search were prepared separately. On which, Dharampal and the witnesses put their respective signatures. When I ASI opened the white colored bag of Dharampal and checked it, based on his experience, a red colored bag was found inside the bag containing the substance ganja in white polythene. When the accused Dharampal asked for the license and permit regarding the ganja recovered from the above, he could not produce any license or permit. When I ASI weighed the ganja with an electronic machine, it found the weight of the ganja along with the white polythene was 312 grams. And the weight of the white colored bag and the weight of the bag was 842 grams, the total weight was found to be 1154 grams, which after putting the bag and polythene ganja in the parcel/bag. I ASI put my seal of NK and KK, stamp of Duty Magistrate Shri Sandeep Punia ASST EXCISE TAXATION OFFICER SONIPAT (AETO) and sample seal was prepared separately. After using my seal, I handed it over to HC Anil Kumar 1749/SPT and Shri Sandeep Punia



ASST EXCISE Taxation Officer Sonipat (AETO), Duty Magistrate Sahib, Sonipat after using the seal, the same was kept with him. The parcel of ganja was taken into police possession vide seizure memo. Memo of recovery was prepared. The accused and the witnesses appended their signatures on the memo. The parcel of ganja and memo of recovery were certified by Sh. Sandeep Punia ASST EXCISE TAXATION OFFICER SONIPAT (AETO) Duty Magistrate. The accused Dharampal has committed the offence punishable under Section 20 of NDPS Act by keeping 312 grams ganja along with polythene in his possession. Therefore, the writing is being sent to the police station through HC Anil Kumar 1749/SPT for registration of the case FIR and after registration of the case, FIR number of informed. Officers should be informed about special report. Myself ASI is the complainant. Sd/- ASI Jaibir 1261/SPT PS Murthal dated 12.07.2024 at 10.30 PM.'

Contentions

On behalf of the petitioner

3. It is contended by the learned counsel for the petitioner that the petitioner has been falsely implicated in this case because his name does not figure in the FIR and he has been roped-in on the basis of disclosure statement of the main accused (Dharampal) in this case. He further contends that the very basis for registration of this FIR is the secret information and the secret informer had disclosed the name of Dharampal only and the name of the petitioner was not disclosed by the secret informer, therefore, the petitioner has nothing to do with the alleged offence. There is no recovery from the petitioner and the entire recovery of Ganja is from the main accused – Dharampal. Thus, the petitioner is liable to be granted anticipatory bail in the present case.

4. Heard counsel for the petitioner.

Analysis and Decision

5. Undoubtedly, the petitioner has not been named in the FIR but his



involvement has been disclosed by the main accused – Dharampal as the seller of the drug named Ganja recovered in the present case added with the fact that six other cases of similar nature against the present petitioner has been registered which indicates the criminal history and intent of the petitioner. Drug trafficking is growing speedily as a menace in society now a days and the present case is one such example as such the petitioner does not deserve any leniency at this stage keeping in view the gravity of offence committed by him.

Moreover, it is settled proposition of law that power exercisable under Section 482 BNSS, 2023., is somewhat extraordinary in character and it is to be exercised in exceptional cases. In State of **Andhra Pradesh vs. Vimal Krishna Kundu**, AIR 1997 SC 3589, Apex Court has held that in case of well orchestrated conspiracy, if the accused is equipped with anticipatory bail order before interrogated by police, would greatly harm the investigation and would impede the prospects of unearthing all the ramification involved in the conspiracy. Similarly, in **Ram Govind Upadhyay versus Sudarshan Singh**, (2002) 3 SCC 598, it has been observed as under:

“3. Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the



same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.”

6. In view of the seriousness of the allegations, the custodial interrogation of the petitioner is certainly required. Therefore, I find no merit in the petition and the same is hereby dismissed.

7. However, it is made clear that the observations made hereinabove shall have no bearing in the mind of the Trial Court while adjudicating the trial.

(SANDEEP MOUDGIL)
JUDGE

13.08.2024
anuradha(v)

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