

2024.PHHC:125190



279.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41372-2024

Date of decision: 17.09.2024

Sanjay

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Akshay Kumar Dahiya, Advocate, for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

GURBIR SINGH, J.

1. This petition has been filed under Section 438 of Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.54, dated 17.01.2023, under Sections 20, 61, 85 of NDPS Act, registered at Police Station Samalkha, Panipat.

2. As per prosecution version, on the basis of secret information, a raid was conducted on 17.01.2023 at the house of Sewadan and on search, recovery of 154 kgs of ganja patti was effected. Rachna and Shimla @ Kali were also apprehended at the spot along with Sewadan. Final report in the case was not presented within a period of 180 days.

3. Case of the petitioner is that he is the husband of co-accused, namely, Rachna and is the cousin brother of main accused, namely, Sewadan. He was not present at the spot when raid was conducted. He had

no knowledge regarding the illegal drug racket being run by the co-accused Sewadan. He came to know only when his wife was arrested from the spot. There is no incriminating evidence against the petitioner. The co-accused Rachna, Shimla @ Kali and Sewadan have already been granted default bail. It is on the basis of their disclosure statements, co-accused Dharamveer (husband of Shimla alias Kali), Sanjay-petitioner herein (husband of Rachna) and Manoj @ Mohd. Rafiq were nominated in the present case. Reliance is placed on case *Tofan Singh Versus State of Tamil Nadu, (2021) 4 SCC 1* wherein it has been held by the Hon'ble Apex Court that disclosure statement made under Section 67 of the Evidence Act is inadmissible in evidence.

3.1 Learned counsel for the petitioner submits that Dharamveer has been released on interim bail vide order dated 01.07.2024 passed by this Court. He further submits that the case of the petitioner is on the same footing as of Dharamveer. Petitioner is ready to join investigation.

4. Pursuant to order dated 27.08.2024, status report by way of affidavit dated 06.09.2024 of Gajender Kumar, HPS, Deputy Superintendent of Police, HSNCB, Karnal, on behalf of respondent-State, along with disclosure statements of co-accused Shimla, Rachna and Sewadhan as Annexures R-1 to R-3, has already been filed in the Registry of this Court, which is taken on record.

4.1 Learned State counsel has opposed the present petition by contending that in the disclosure statements, co-accused Sewadhan, Shimla,

and Rachna have admitted that Sewadan along with his uncle Dharamveer, his aunt Shimla, his maternal uncle's son Sanjay and his sister-in-law Rachna brought 154 kg of ganja from a boy named Manoj from Odisha, for Rs.4,05,000/-. During investigation, it was found that the real name of said Manoj is Mohammad Rafiq and he was in regular touch with the petitioner. From the CDR of mobile phones of petitioner and Mohammad Rafiq, there was regular conversation between them from 28.12.2022 to 14.01.2023. Moreover, case of Dharamveer is on different footing as there was no call record between Dharamveer and the main accused. Custodial interrogation of the petitioner is necessary.

5. I have heard the submissions of learned counsel for the parties and have gone through the file.

6. The allegation against the petitioner is that he along with Dharamveer supplied contraband to the main accused who was caught red handed with 154 kgs of ganja patti. The petitioner was nominated on the basis of disclosure statement of co-accused and during investigation, it was found that said contraband was arranged from one Manoj whose real name is Mohammad Rafiq. As per the call detail record, the petitioner and said Mohammad Rafiq were in regular touch on phone from 28.12.2022 to 14.01.2023.

6.1 In case *The State of Haryana Versus Samarth Kumar, 2022 LiveLaw (SC) 622*, it has been held that at the stage of investigation, disclosure statement of co-accused cannot be ignored. Disclosure statement

of co-accused which is inadmissible evidence is only for the purpose of regular bail or trial of the case. Since there was no call record of Dharamveer, co-accused, so he was granted interim anticipatory bail, but the case of the petitioner is on different footing. It is well known that menace of drugs is eating the basic fabric of the society. More and more youth are addicting to drug due to easy availability of such contraband. Unless the source from where the contraband is procured is known and curbed, all efforts by the law enforcing agencies are futile to curb the drug menace.

7. In the light of above discussion, this Court is of the view that it is not a fit case where the petitioner is entitled for grant of anticipatory bail. Accordingly, the present petition is dismissed.

8. What has been observed above is only for the purpose of deciding this petition and has no effect on the merits of the case before the trial Court.

(GURBIR SINGH)
JUDGE

September 17, 2024
sanjeev

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