

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

CRM-M-56774-2023
Date of Decision: 09.04.2024

ASHOK KUMAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

This 4th petition under Section 438 Cr.P.C. is for the grant of anticipatory bail in case bearing FIR No.171 dated 13.08.2022 registered under Sections 21(b) and 27(a) of the NDPS Act, 1985 at Police Station Bhattu Kalan, District Fatehabad, Haryana.

2. The brief facts of the case are that on 13.08.2022, secret information was received that Kavita @ Pooja wife of Ashok Kumar (petitioner) was indulging in the sale of heroin at her residence and if a raid was conducted, she could be apprehended.

Based on the said information, the residential house of Kavita @ Pooja was raided and the recovery of 35.20 grams of heroin was effected from her. She disclosed that her husband was indulging in the sale of heroin and was also a consumer. The heroin recovered from her was bought by her husband Ashok Kumar and it had been hidden by him which was in her knowledge and in the absence of her husband she would sell the same.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He contends that the name of the petitioner figured in the disclosure statement of his co-accused namely, Kavita @ Pooja which has little evidentiary value. Therefore, he was entitled to the concession of bail even though he was an accused one other case under the NDPS Act. Reliance is placed on the judgment in the case of **Tofan Singh Versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592.**

4. A status report dated 06.04.2024 by way of an affidavit of Kulwant Singh, HPS, Deputy Superintendent of Police, Fatehabad has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that the petitioner was a habitual offender and an accused in 18 cases. Though, he had been acquitted in 8 cases, he was an under-trial in 10 cases out of which one was under the NDPS Act. Though, no recovery had been effected from the petitioner in the instant case, the said fact was of little significance as the recovery had been effected from his wife who had categorically disclosed that the contraband in question had been purchased by the petitioner who had hidden the same in their house. He submits that the petitioner had approached this Court on three occasions and each time his bail application came to be withdrawn after it had been argued at some length. There were no change in circumstances entitling the petitioner to the grant of bail.

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

6. A perusal of record would reveal that the petitioner is an accused in 18 cases. In 8 cases he stands acquitted whereas in 10 cases he is an under-

trial. One of the 10 cases pertains to an offence under the NDPS Act as well. Though no recovery has been effected from the petitioner, the recovery has been effected from his wife while she was in their house. The statement of the wife was recorded during the course of investigation in which she stated that the petitioner had purchased the contraband and had hidden it in the house. She had found the same and was attempting to sell it. Thus, it is apparent that merely because no recovery had not been effected from the petitioner would not exculpate him and entitle him to the grant of the bail in the facts and circumstances of the present case. Further, the bar under Section 37 of the NDPS Act would come into play when he is a serial offender. Even otherwise, his bail application has been argued and withdrawn on three earlier occasions. No change in circumstances have been pointed out entitling him to the grant of bail.

7. In view of the aforementioned discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

8. However, the observations made hereinabove are only for the purposes of deciding this bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence led before it uninfluenced by any such observations made herein.

(JASJIT SINGH BEDI)
JUDGE

09.04.2024
JITESH

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