

(2023) 07 DEL CK 0253
In the Delhi High Court
Case No : Bail Application No. 2047 Of 2023

Kusum

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 31-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 21, 25, 29, 37, 67
Indian Penal Code, 1860 — Section 34, 149

Citation : (2023) 07 DEL CK 0253

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : Sunil Kumar Mehta, Ajay Vikram Singh

Final Decision : Dismissed

Judgement

Vikas Mahajan, J

1. This is a petition seeking anticipatory bail under Section 438 Cr.P.C. in FIR No. 0237/2023 dated 20.02.2023 registered under Section 21/25 NDPS Act, 1985 at P.S. Bawana.

2. The brief facts of the case are that secret information was received that a person named Bhushan @ Veera was indulging in sale and supply of heroin in Delhi for Kusum and Mala after procuring the same from them. On the basis of said information, Bhushan was apprehended, while he was coming on a scooty and heroin weighing 400 grams (including weight of transparent polythene), was recovered from him.

3. During course of the investigation, accused Rashid Khan was arrested on 05.04.2023, who disclosed that many times, he supplied heroin to Kusum and Bhushan. At the instance of Rashid Khan, raid was conducted at the house of petitioner, but she had absconded after registration of the case.

4. During interrogation, accused Bhushan disclosed that the recovered

contraband was given to him by the petitioner / Kusum for further supply. He further disclosed that many times, he procured heroin from his mother-in-law namely Mamta @ Mala, who is the real sister of petitioner.

5. A status report has also been filed by the State wherein it has been stated that the petitioner has been involved in 08 cases of NDPS Act during the period from 2003 – 2021. It is further mentioned in status report that the entire family of petitioner / Kusum including her sister Mamta Sapra and brother Dinesh @ Danny were indulging in trafficking of heroin.

6. The learned counsel for the petitioner submits that the prosecution has not pointed out in the status report that Rashid Khan was released on bail by the court on 11.04.2023 due to insufficient evidence collected against him during investigation of the case.

7. He further submits that Shweta, who is the owner of the seized scooty, was granted anticipatory bail vide order dated 06.06.2023 by the learned Trial Court in spite of the fact that co-accused Bhushan was found riding the said scooty at the time of recovery of the contraband. He submits that though in the disclosure statement of Bhushan it has been stated that the contraband which was recovered from him was brought by his wife Shweta from the petitioner Kusum, whereas, Shweta in her interrogation statement recorded on 01.06.2023 has stated that she had never brought any contraband from the petitioner Kusum and the allegations are false.

8. The learned counsel further contends that chargesheet has been filed by the State qua Bhushan and Shweta under Section 21 / 25 / 29 NDPS Act and the petitioner has not been named as an accused in column no. 11 nor her name figures in column no. 12. He further submits that the statement of co-accused recorded under Section 67 of NDPS Act is not admissible for any purpose against the petitioner in view of the law laid down by the Hon'ble Supreme Court in Toofan Singh Vs State of Tamil Nadu 2021 (4) SCC.

9. He also contends that it is trite law that the petitioner cannot be penalized and harassed continuously on the basis of frivolous cases registered against her in the past, where the petitioner has either been acquitted or admitted to bail or has completed the sentence awarded.

10. Per contra, the learned APP appearing on behalf of the State argued on the lines of the status report. He submits that the entire family of the petitioner is indulging in drug trafficking and have previous criminal record.

11. He submits that custodial interrogation of the petitioner is required to unearth the conspiracy. He further submits that the petitioner has not joined investigation despite a notice under Section 67 NDPS Act being pasted on the main door of her house twice, as her house was found locked on both occasions. He urges the court to dismiss the anticipatory bail of the petitioner.

12. I have heard the learned counsel for the petitioner as well as learned APP

and have perused the record.

13. Before advertng to the submissions of the parties, profitable would it be to refer to the factors and parameters to be considered for granting anticipatory bail, which have been enumerated by the Supreme Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra* (2011) 1 SCC 694, as under:

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused’s likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

14. A Constitutional Bench of the Supreme Court in *Sushila Aggarwal Vs. State (NCT of Delhi)*, (2020) 5 SCC 1 has also held :

"92.4 Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

15. In the present case, there is no contraband recovered from the petitioner or from her premises. However, in his disclosure statement Bhushan @ Veera, who was arrested with 400 grams of heroin, has stated that he and his wife are supplying heroin to their customers after procuring the same from petitioner-Kusum. When Kusum does not have the heroin, then they get the same from his mother-in-law Mamta. He has further stated that the heroin which has been recovered from him was brought by his wife Shweta from the petitioner-Kusum.

16. No doubt Shweta in her interrogation has denied the fact of having brought the heroin from petitioner-Kusum, but she has admitted that the Petitioner-Kusum is her real Mausi (maternal aunt) and she often meet her and last she met her one month earlier.

17. In view of the law laid down in Toofan Singh (supra), the disclosure statement of co-accused Bhushan recorded under section 67 of the NDPS Act may not be sufficient to hold the petitioner guilty, but at this stage, it cannot be ignored that co-accused Bhushan was arrested with 400 grams of heroin, which is a commercial quantity, and he has clearly stated that he and his wife have been procuring contraband from the petitioner and the seized contraband has been brought by his wife Shweta from the petitioner.

18. Co-accused Bhushan is also closely related to the petitioner through his wife, who is in regular touch with the petitioner. It is also a matter of record that petitioner has been involved in 08 cases of NDPS Act during the period of 2003 – 2021, therefore, at this stage, involvement of Kusum in the chain of supply of heroin which has been recovered from co-accused Bhushan cannot be ruled out.

19. The status report also reveals that the entire family of the petitioner including her sister Mamta and brother Dinesh @ Danny are indulging in trafficking of heroin. The petitioner has also not joined the investigation despite being served with notices under Section 67 of the NDPS Act.

20. Activities of drug cartels have become rampant and alarming. Drug abuse is highly undesirable for the society at large, more particularly for the adolescent and the youth of the country, who are soft targets and easily fall prey to the bait of drug peddlers. To curb the menace of drug trafficking in the country, law has also prescribed stringent parameters in the form of section 37 of NDPS Act for grant of bail under the NDPS Act.

21. Having regard to the commercial quantity of heroin seized from co-accused Bhushan and his close relationship with the petitioner and also the previous criminal record of the petitioner, custodial interrogation of the petitioner at length

is necessary to unearth the conspiracy and the supply chain of heroin which was recovered from co-accused Bhushan.

22. Reliance placed by learned counsel for the petitioner on the decision of this court in M.D. Irshad Vs. State NCT Delhi in BAIL APPLN. 994/2022 (DoD 05.05.2022), to contend that the applicant in the said case was granted anticipatory bail on the ground that the only evidence against the applicant therein was the confessional statement of the arrested accused, is misplaced, in as much as, the court in that case was of the view that there was no reason to believe, prima facie, that the accused is part of a larger conspiracy. Besides that the applicant in the said case was not having any past antecedents, which is not the case with the present petitioner.

23. The petitioner cannot also claim parity with Shweta, wife of co-accused Bhushan, as the learned Special Judge (NDPS) while granting bail to her specifically noted that she does not have any past antecedents, whereas the petitioner herein has a criminal record.

24. In view of the above facts and circumstances, no ground is made out for grant of anticipatory bail to the petitioner.

25. Accordingly, the petition is dismissed.

26. Nothing stated herein above shall be construed as an expression of an opinion on the merits of this case.