

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29888-2024
Reserved on: 11.11.2024
Pronounced on: 28.11.2024

Rajat Dutta ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. M.S. Chauhan, Advocate,
for the petitioner.

Mr. Vikrant Pamboo, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
544	05.11.2023	Baldev Nagar, Distt. Ambala, Haryana	22 of NDPS Act and 42 of the Prison Act.

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC 1973, seeking anticipatory bail.
2. The facts and allegations are taken from the status report filed by the State, which reads as follows:

“3. That the present FIR No. 544 dated 05.11.2023 under sections 22 of the NDPS Act 1985, and Section 42 of Prison Act, registered at Police Station Baldev Nagar, District-Ambala on the complaint of Prince Kumar DSP, Jails, Central Jail, Ambala District Ambala. The contents of complaint are as under:-

"Sir, the contents of the complaint are as under, "From Deputy Superintendent, Central Jail, Ambala. To, SHO, Police Station Baldev Nagar, Ambala City, Serial No.2248.9 1.0 dated 04/11/2023. Subject: Regarding taking legal action after inquiry with regard to recovery of 09 mobile phones along with battery, 4 chargers, 03 sim cards and intoxicating tables during search in Central Jail, Ambala. Regarding the subject mentioned above, it is informed to you that today on 04/11/2023 at around 04:00 PM, on the basis of secret information, Supervision

(Chhakar) In-charge Head warden Suresh Kumar Belt No.540 came to know that three packets has been thrown from outside near vacant barrack (Chakki) No.9. The Supervision In-charge immediately gave this information to Deputy Superintendent (Jail) Smt. Neelam. On the basis of information under the chairmanship of Deputy Superintendent (Jail) a team of officials on duty was constituted whose name are Supervision In-charge Head warden Suresh Kumar Belt No. 540, Assisting Supervisor Trend wader Manoj Kumar Belt No.1058, Warder Jaipal Singh Belt No.736 who was deputed in Block H/1, H/2 and H/3, Warder Nihal Singh Belt No. 1198 who was posted at Block 7/A, Warder Balwinder Singh Belt No.2835 who was posted at 24/H went to the vacant lying barrack and caught prisoner Rajat S/o Sunil and prisoner Puneet S/o Kanhaiya climbing the wall after picking the article thrown from outside. Immediately, on the basis of suspicion, the search of these prisoners was conducted. During search, one packet was recovered from prisoner Rajat S/o Sunil Kumar. From that packet, two mobile phones along with battery, one sim card of Airtel Company having EMI No.05231D899100092xxxxxxx and two packets of intoxicated tablets were recovered. On through inquiry from the prisoners, they disclosed that three packets were thrown from out on our asking and out of that two packets have been given to Kamaljit Singh S/o Tejender, Shubham S/o Tarsem and Rishabh S/o Kamal. Thereafter taking immediate action, the team got recovered all the articles from the prisoners to whom the mobile packets were given. xxx xxx”

3. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.

4. The State’s counsel opposes bail and refers to the reply.

5. It would be appropriate to refer to the following portions of the reply, which read as follows:

“10. That as a matter of fact, during investigation of the case, it has been revealed that during search of accused-petitioner, one packet was recovered from prisoner Rajat S/o Sunil Kumar. From that packet, two mobile phones along with battery, one sim card of Airtel Company having EMI No.05231D8991000xxxxxxx and two packets of intoxicated tablets were recovered. It has also been found that the accused-petitioner was

released from the judicial custody on bail therefore, he could not be joined in the investigation with other co-accused persons, however, on 21.06.2024, the accused-petitioner came to the investigating officer and in pursuance with the orders of this Hon'ble Court, he was joined in the investigation and was formally arrested in this case and after due interrogation, he was released on bail. It is submitted that the accused-petitioner has committed grave offence under NDPS Act, hence, the present petitio is liable to be dismissed."

6. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps taken to arrest the accused.

7. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for anticipatory bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

8. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

9. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

10. The bail order is subject to the petitioner's complying with the following terms.

11. *The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and*

when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

12. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

13. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

14. Notwithstanding anything stated above, if the contraband falls under the commercial quantity because of the laboratory report, then the petitioner shall be informed and supplied with a copy of the FSL report. He shall be granted 7 days to file another anticipatory bail application before the Sessions Court or this Court seeking bail for commercial quantity by meeting the rigors of S. 37 of the NDPS Act. The present bail order shall automatically stand recalled on the 8th day of the communication of the report of FSL to the petitioner.

15. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

16. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

17. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

28.11.2024
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.