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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-20026-2015 in/and
CRM-M-35560-2014**

Date of decision : 06.07.2015.

Harwinder singh @ Happy

..... Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. B.S. Aulakh, Advocate for petitioner.

Mr. Jashanpreet Singh, AAG, Punjab.

DARSHAN SINGH, J.

CRM-20026-2015

Heard.

For the reasons mentioned in the application, the same is allowed. Documents Annexure P-3 and Annexure P-4 are taken on record.

CRM-M-35560-2014

Learned State counsel has filed the status report by way of affidavit of Shri Jaswant Singh, DSP (Detective), Sri Muktsar Sahib, along with some documents. Copy of the same has been supplied to learned counsel for the petitioner.

This petition has been filed by petitioner Harwinder Singh alias Happy for grant of anticipatory bail in case FIR No.77 dated 10.07.2014 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act').

Learned counsel for the petitioner contended that the story of the prosecution is highly unbelievable. It has been stated that after throwing the plastic bag containing the contraband, the petitioner fled away from the spot on the motorcycle. He contended that if the petitioner was able to escape from the spot with the motorcycle, then what was the need for him to throw the bag containing the contraband to create evidence against himself. He further contended that the petitioner was not apprehended at the spot and no recovery has been effected from his possession. On the date of occurrence, he was admitted in Anmol Jeewan Drug De-addiction and Rehabilitation Centre, as per the Certificate dated 15.12.2014 issued by Shri Ravinder Malya, the Chairman of the said Centre. Thus, he pleaded that false case has been registered against the petitioner. He is ready to join the investigation and entitled for grant of anticipatory bail.

On the other hand, learned State counsel pleaded that the petitioner was identified at the spot by HC Harnek Singh. Thereafter, he managed to escape. 150 grams intoxicant powder was recovered from the bag, which was thrown away by the petitioner. He was the sole person riding on the motorcycle. There was no reason for his false implication, as the police officials were not having any enmity with the petitioner. He

further contended that the petitioner was on leave from the De-addiction Centre on the relevant date, which is evident from the certificate issued by Ravinder Malya, President of the said Centre. He further contended that provision of Section 37 of the Act are applicable in this case as the recovery falls in the definition of commercial quantity. So, the petitioner does not deserve the concession of anticipatory bail.

I have duly considered the aforesaid contentions.

It is settled principle of law that in order to secure the remedy of the anticipatory bail, the petitioner has to make out a special case. In the instant case, it has been categorically mentioned in the FIR that the petitioner was identified at the spot by HC Harnek Singh because he was earlier known to him. He was having one plastic polythene in his hand. He threw away the same and quickly run away on the motorcycle. So, as per the prosecution allegations, the petitioner was very much identified at the spot by HC Harnek Singh. No doubt in the certificate produced by the petitioner, it has been mentioned that he has on one day leave from the Drug De-addiction Centre on 19.11.2014 and was admitted in that Centre on 3.7.2014 but the aforesaid certificate is contradicted by another certificate issued by Ravinder Malya, the President, and Sukhdarshan Singh, Cashier of the said De-addiction Centre, which shows that the petitioner has proceeded on leave on 09.07.2014 for two days and the present case has been registered on 10.07.2014, when as per this certificate, he was on leave from the said De-addiction Centre.

This fact has not been disputed that the quantity of the intoxicant powder alleged to have been recovered from the possession of the petitioner falls within the definition of commercial quantity which will attract Section 37 of the Act.

Thus, keeping in view my aforesaid discussion, the petitioner has not been able to make out the exceptional case in order to claim the extraordinary privilege of anticipatory bail.

Consequently, the present petition has no merits and the same is hereby dismissed.

06.07.2015

sunil yadav

**(DARSHAN SINGH)
JUDGE**