

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.50045 of 2017

DATE OF DECISION: MARCH 13, 2018

LAKHVIR SINGH @ KALA

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU.

PRESENT: MR. JITENDER DHANDA, ADVOCATE FOR THE PETITIONER.
MR. VIKAS MALIK, DAG, HARYANA.

MAHABIR SINGH SINDHU, J.

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C.') for grant of anticipatory in FIR No.99 dated 12.2.2017, registered under Section 22-C/61/85 of NDPS Act, Police Station Ratia, District Fatehabad.

It is contended by the learned counsel for the petitioner that his name doesn't find mention in the FIR and he has been implicated on the basis of confessional statement made by co-accused Hem Raj on 11.3.2017. It is further contended that as per the statement of Hem Raj, the contraband which was recovered from the bag thrown away by him on 12.2.2017 was allegedly delivered by the present petitioner, whereas the petitioner was in police custody on 12.2.2017. Further contended that the main accused Hem Raj made a disclosure statement on 11.3.2017, but no effort was made by the police to arrest him till date.

On the other learned State counsel has opposed the bail application on the ground that petitioner is an habitual offender under the

provisions of NDPS Act as he is already facing 3 other cases under the NDPS Act and custodial interrogation of the petitioner is very much necessary to elicit the actual source of contraband.

Heard learned counsel for petitioner as well as learned State counsel and perused the paper book.

It is the case of the prosecution that on 12.2.2017, Police party headed by ASI Om Parkash was on patrolling duty in the area of police station Ratia and when going from village Mehmra to Badalgarh, then ASI Om Parkash received a secret information that Hem Raj son of Chandi Ram caste Arora resident of village Badalgarh is running a clinic illegally and in the garb of the same is in the business of selling intoxicants and if raid is conducted, he could be caught red handed. The information was found reliable and ASI Om Parkash informed Dr. Vijay Jain SMO, Ratia and briefed him and requested to accompany the police party and consequently they all reached the spot immediately in village Badalgarh and raided the clinic of Hem Raj which was being run at his residence. But upon seeing the police party, he ran away alongwith a plastic bag on his right shoulder by scaling the wall and threw the plastic bag in front of gate of clinic and escaped after getting the benefit of darkness. Hem Raj was identified by ASI Om Parkash when he turned his face as he was earlier known to him and upon the checking of the bag, it was found containing 2500 tables of Alprasave 0.5 in first polythene bag, 380 tablets of Alprazolam Digifresh 0.5 mg. in second poletene bag, 250 tablets of AT 2 mg. in third polythene bag, 552 capsules Sapsmo Proxywon in fourth polythene bag and 511

tablets of Pindol Forte in fifth polythene bag and 6190 tablets of Tramaset from another polythene bag. The entire contraband was checked by Dr.Vijay Jain who gave his opinion that the entire contraband weighed 682 gms. and that the recovered tablets of Alprasave 0.5 mg, tablets of AT 2 mg. and tables of Alprazolam Digifresh 0.5 mg. Come under the purview of NDPS Act and other tablets and capsules come under the purview of Drugs Act and after taking into possession the sample strips, the remaining contraband was converted into a parcel which was sealed with the seal 'OP'. FSL report (Annexure R-1) in the case was received on 4.10.2017 and as per the report, all the samples were found to be positive containing the salt of Lorazepam, Alprazolam, Tramadol, Tramdol and Paracetamol, Tramadol-Acetaminophene-Dicylomine medicines. Thereafter, Hem Raj was arrested on 10.3.2017 and on interrogation, he made a confessional statement that 5-6 days before the occurrence, the contraband was delivered to him by the petitioner at his residence.

A perusal of the case file reveals that it was specifically stated by co-accused Hem Raj that contraband was delivered to him by the petitioner 5-6 days prior to the date of occurrence i.e. 12.2.2017 and thus the contention on behalf of the petitioner that he was in police custody on 12.2.2017 will not make any difference. The petitioner is to be interrogated by the police as to when the contraband was supplied by him to the co-accused Hem Raj and what is the source. It has also come on record that three other cases under the NDPS Act are also pending against the petitioner before the trial Court and is stated to be on bail.

Keeping in view the fact that the petitioner is a habitual

offender under the NDPS Act and the present case also relates to the offence under the NDPS Act, no case is made out to grant to anticipatory bail to the petitioner and accordingly, the petition stands dismissed.

The above observations shall not be construed as an expression of opinion on merits of the case.

March 13, 2018
Gulati

(MAHABIR SINGH SINDHU)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes