

**206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.5273 of 2019 (O&M)
Date of Decision : 18.03.2019**

Jagatpal

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. S.S.Sahu, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

AJAY TEWARI, J. (Oral)

This is a petition for grant of pre-arrest bail to the petitioner under Section 438 Cr.P.C. in case FIR No.284 dated 23.12.2018 registered under Section 21 (b), 27-A/61/85 of NDPS Act, 1985 at Police Station Bhattu Kalan, District Fatehabad.

On 11.02.2019 the following order was passed:-

“Prayer in the present petition filed under Section 438 of the Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.284 dated 23.12.2018 registered under Sections 21 (b), 27-A/61/85 of NDPS Act, 1985 at Police Station Bhattu Kalan, District Fatehabad.

The allegations are that 110 grams heroine was recovered from three persons. Those three persons had named the petitioner and had stated that they had gone to Delhi alongwith the petitioner in his Alto Car. Counsel for the petitioner has argued that since no recovery was made from him and in any case if seizure is of non-commercial quantity he

should be released on bail. Counsel for the petitioner has further stated that similarly situated co-accused Sant Lal was also granted concession of bail on the ground that no recovery was made from him and he was named in the disclosure statement. Counsel has further argued that two cases under NDPS Act are pending against Sant Lal but against the petitioner no case is pending under NDPS Act.

Learned DAG on instructions from SI Virender Singh has accepted all the abovesaid factual assertions but stated that call records of the petitioner reveal that he was in Delhi at that relevant time.

In my opinion, this sole fact would not sufficient to justify grant of custodial interrogation at this stage.

In the circumstances, I do not deem it appropriate to deny the concession of interim bail to the petitioner. The petitioner is directed to appear before the investigating officer on 25.2.2019 and on any other date as and when his presence is required. In the event of arrest of the petitioner, he shall be released on bail by the Investigating Officer subject to the conditions envisaged under Section 438(2) Cr.P.C.

Adjourned to 18.3.2019 to await the report of the Investigating Officer.”

Learned State counsel on instructions from ASI Bhajan Lal has opposed the application for bail by stating that the petitioner has been implicated under Section 27-A of the NDPS Act which is a serious offence. In my opinion, however, there is no distinction between the case of the petitioner and the case of the co-accused Sant Lal who was granted bail by order passed in **CRM-M-1065-2019** decided on 21.01.2019 (Annexure P-2).

In these circumstances, I do not deem it appropriate to deny anticipatory bail to the petitioner.

Resultantly, the petition is allowed. The interim order dated 11.02.2019 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

18.03.2019
pooja sharma-I

(**AJAY TEWARI**)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No