

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

205

CRM-M-352-2020

Date of decision: 26.02.2020

Sukhbir @ Bhutiya

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Bhavdeep Singh Mamli, Advocate
for the petitioner.

Mr. Arjun Singh Yadav, AAG Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

Prayer in the petition filed under Section 438 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C") is for grant of anticipatory bail to the petitioner in case FIR No.0450 dated 12.11.2019 registered under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") at Police Station Sadar Fatehabad, District Fatehabad.

As per the prosecution version, on 12.11.2019 when S.I. Om Parkash along with other police officials was patrolling in Government vehicle, one Maruti came from the side of Bhuna and on seeing the police party, the driver stopped the car and tried to turn back. The police apprehended the car driver Daulat Ram and two boys Ajay @ Binny and Rahul sitting on the back seat of the car. On search 10 grams of heroin each was recovered from both of them. During investigation, the petitioner was implicated by the co-accused in the disclosure statements. Apprehending his arrest, the petitioner has filed the petition for grant of anticipatory bail.

While issuing notice of motion on 10.01.2020, this Court had granted interim anticipatory bail to the petitioner with direction to join the investigation.

Learned State Counsel has appeared on behalf of the respondent-State and opposed the bail application.

I have heard learned Counsel for the petitioner as well as learned State counsel and have gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner was falsely implicated in the present case on the basis of disclosure statements of co-accused Ajay @ Binny and Rahul from whose possession non-commercial quantity of 20 grams (10 grams each) of heroin was allegedly recovered by the police. The petitioner was not present/apprehended on the spot and no recovery was made from him. Section 37(1)(b) of the NDPS Act is not applicable in the case. The petitioner has joined the investigation. His custodial interrogation is not required for effecting any recovery.

Learned State counsel has submitted that the petitioner does not deserve anticipatory bail and the petition may be dismissed.

However, learned State counsel has on instructions from the investigating officer, acknowledged that in compliance with order dated 10.01.2020 passed by this Court, the petitioner has joined the investigation and submitted that his custodial interrogation is not required for effecting any recovery.

In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioner, non-applicability of Section 37(1)(b) of the NDPS Act in the case, the fact that custodial interrogation of the petitioner is not required in the case but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves the concession of anticipatory bail.

Therefore, the petition is allowed and order dated 10.01.2020 granting interim bail to the petitioner is made absolute. However, the petitioner shall join the investigation again if and as and when called upon to do so and shall abide by the conditions enumerated in Section 438 (2) of the Cr.P.C., failing which the protection of anticipatory bail order shall not be available to him.

26.02.2020

Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No