

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

CRM-M-15143-2020

Date of decision:-16.9.2020

Prem Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sandeep Siwach, Advocate
for the petitioner.

Mr.Anmol Malik, DAG, Haryana.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Prem Kumar aged about 31 years, an accused in FIR No.99 dated 7.5.2020 for the offences under Sections 21A, 27A (Act No.61) of NDPS Act and Sections 188, 269 IPC and Section 51(b) of Disaster Management Act, 2005, registered with Police Station City, Ratia, District Fatehabad.

Briefly stated, the facts of the case as per the prosecution story are that, on 7.5.2020, a police party from Police Station City, Ratia, District Fatehabad led by ASI Kailash Chander while present at T-point on Fatehabad – Ratia road within jurisdiction of P.S. City, Ratia intercepted one Bittu Ram son of Jagir Singh and recovered 5 gms. of heroin from his possession. The recovered contraband was seized.

Accused was arrested. Formal FIR was registered. The investigation in the case started, during the course of which, accused Bittu Ram stated that he had purchased the recovered 5 gms. of heroin from the present petitioner for Rs.9,000/- and he further demarcated the place from where the heroin had been recovered.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, however, his such request was declined by learned Duty/Additional Sessions Judge, Fatehabad vide order dated 22.5.2020. As such, the petitioner has approached this Court by way of filing the present petition asking for similar relief, which is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the petitioner has contended that the petitioner has nothing to do with the crime; no recovery was effected from him; he has been involved in this case in pursuance of disclosure statement of co-accused, which is not admissible in evidence. He further submits that the petitioner has joined the investigation in terms of the order passed by this Court dated 15.6.2020 granting him interim bail, therefore, his custodial interrogation is not required, as such he be granted pre-arrest bail.

Whereas learned State counsel has vehemently opposed the request contending that though the petitioner has joined the investigation but he has not rendered full cooperation and has not disclosed from where

he had been procuring the drugs and to which persons he had been supplying the same. Therefore, his custodial interrogation is necessary and in case the same is denied to investigating agency, the investigation shall be greatly prejudiced.

After hearing the rival contentions and going through the record, I find that there is no merit in the petition. As far as contention of learned counsel for the petitioner that petitioner is innocent, that question is to be decided by the trial Court considering the evidence adduced before it by the prosecution, statement of accused under Section 313 Cr.P.C. and defence evidence, if any, produced by the accused. At this stage, this Court is to see whether there is some material to show involvement of the petitioner in the crime. Of course, there is statement of co-accused Bittu Ram recorded by the police to the effect that he had purchased the contraband from the present petitioner. The contention of learned counsel for the petitioner that such statement is not admissible in view of Section 24 of the Evidence Act, is without any merit. There is nothing on record to show that Bittu Ram had made statement under any threat or having been given any inducement etc.

With regard to admissibility of statement of co-accused, Section 30 of the Evidence Act, clarifies that when more person than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Furthermore, such statement can certainly be looked into for

providing lead in the investigation and it is not correct to state that statement of such co-accused cannot be looked into at all as regards the persons named by him being participants in the crime.

As regards accused having been joined the investigation, learned State counsel has categorically stated that though the petitioner has joined the investigation but he he has not disclosed the source from where he had been procuring the drugs and the persons to whom, he had been supplying the same.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

The drug trafficking is rising at an alarming rate in this region, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking.

Accused has been booked for several offences including one under Section 27A of the NDPS Act.

Section 37 of the Act reads as under:

Offences to be cognizable and non-bailable.—(1)

Notwithstanding anything contained in the Code of Criminal Procedure,

1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(iii) (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

There is nothing to record satisfaction that there are reasonable ground for believing that petitioner is not guilty of that offence or that he has not committed any offence.

In case of **State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268**, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation to find out as to from where he had brought the contraband and where he intended to sell it. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

16.9.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No