

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

CRM-M-17636-2020

Date of Decision:10.07.2020

Ashok Kumar

.....Petitioner

Vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Mr. Pardeep Parkash Chahar, DAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 pandemic.

By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.217, dated 13.06.2020, having been registered at Police Station Sadar, District Fatehabad, alleging therein the commission of offences punishable under Sections 21-C/27-A of the NDPS Act, 1985.

On 07.07.2020, the following order had been passed by this Court:

“Present: Mr.Sandeep Kotla, Advocate,
for the petitioner

...

All cases listed today have been taken up for hearing by way of video conferencing because of the situation existing due to the Covid-19 Pandemic.

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.217 dated 13.6.2020 having been registered against him at Police Station Sadar, District Fatehabad, alleging therein the commission of offences punishable under Sections 21(c)/27(a)/29 of the NDPS Act, 1985.

Learned counsel for the petitioner submits that the petitioner has only been arraigned as an accused on the alleged disclosure statement made by the person who allegedly was apprehended at the spot by the investigating agency with 407 grams of heroin (as per the case of the investigating agency), and therefore he has only been falsely implicated in the matter.

Notice of motion.

Mr.P.P.Chahar, learned DAG, Haryana, accepts notice at the asking of the court, he already having received an advance notice of the petition.

Mr.Chahar submits that the investigating officer has obtained the call detail records of the person apprehended at the spot (Suresh Kumar) and found that he was in conversation with the petitioner and one Satish Kumar at Delhi at the relevant time, with there being 16 other criminal cases registered against the petitioner under various offences, including under the provisions of the Punjab Excise Act, 1914, though there is no other case registered earlier against him under the NDPS Act, 1985.

He further submits that the motorcycle that Suresh Kumar was using at the time of his arrest, belongs to the uncle of the petitioner.

In rebuttal, Mr.Kotla submits that just because the petitioner may (or may not) have been in touch with the person so apprehended, does not make him culpable of any crime that such person may have committed.

He further submits that in fact the only call details record as has been referred to by learned State counsel is between the aforesaid Satish from Delhi and Suresh Kumar, and does not involve the petitioner at all.

Having considered the above, unless Mr.Kotla is referring to the contentions raised by learned State counsel today itself, it is not understood as to how the petitioner would know as to what call details were obtained by the police, unless he was in touch with some body who was so involved; but be that as it may, that is only an observation made by this court which will not be taken against the petitioner on merits.

Learned State counsel would take instruction *qua* the call details records obtained by the police, of any conversation between the petitioner, the aforesaid Satish Kumar and the person stated to be apprehend at the spot, i.e. Suresh Kumar.

XXXX XXXX XXXX XXXX

The matter having been taken up again in the post lunch session for learned counsel for the State to place on record or upload any proof of communication between the petitioner and the person arrested on the spot, he submits that due to a communication problem he could not obtain the information.

Adjourned to 10.07.2020.

Till that time only and specifically, the petitioner be not arrested.”

Today, learned State counsel has sent by way of a Whatsapp communication to the co-ordinator of this video conferencing, call detail records of the mobile telephones stated to be owned by the petitioner (Ashok Kumar), as also the person who was apprehended at the spot, i.e. Suresh Kumar, and Satish of Delhi, who is also a co-accused, with the petitioner and Satish allegedly having been named as such accused by the person apprehended at the spot, i.e. Suresh Kumar.

Mr.Chahar points to the fact that other than the fact that on previous dates also the petitioner and Suresh Kumar were in telephonic conversation with each other off and on, even on the date of occurrence as recorded in the FIR, i.e. 13.06.2020, the petitioner was in conversation with Suresh Kumar periodically from the morning right upto 8:00 p.m., the occurrence having taken place at about 9:41 p.m. (as recorded in the FIR).

He further submits that there are 16 other criminal cases registered against the petitioner, though in about 8-9 cases he has been acquitted. The cases are those involving violation of provisions of the Punjab Excise Act, 1914, with one case being such in which the commission of an offence punishable under Section 307 of the IPC is also alleged, though that case is still to be finally decided.

Mr.Kotla, learned counsel for the petitioner, on the other hand submits that most of the phone calls, even as per the call details uploaded by way of a Whatsapp communication today, are between Suresh Kumar and the aforementioned Satish, with the calls between the petitioner and Suresh Kumar being far lesser in number. He therefore submits that as no other

criminal case is registered against the petitioner under the provisions of the NDPS Act, he deserves the concession of anticipatory bail.

Having considered the matter, though otherwise this court may have been inclined to grant bail to the petitioner, in view of the fact that there is no other case registered against him under the provisions of the NDPS Act, 1985, but seeing his antecedents as also the fact that he is shown to be, (atleast as per what has been shown to this court today from the call detail records), in touch with the person apprehended with 407 grams of heroin, I do not think that it is an appropriate case where he can be granted the concession of anticipatory bail.

Consequently, this petition is dismissed.

However, nothing stated hereinabove shall be taken to be a comment on the actual merits of the case, for or against the petitioner or any of his co-accused, all such comments having been made only in the context of a petition filed under the provision of Section 438 Cr.P.C.

July 10, 2020

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : YES