

CRM-M-19881-2020

Date of decision: 31.07.2020

Musafir Bharti

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Sandeep Kotla, Advocate
for the petitioner.**FATEH DEEP SINGH, J.(ORAL)**

Due to the outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

Notice of motion to official respondent-State.

Mr. B.S. Virk, DAG, Haryana puts in appearance and accepts notice on behalf of the official respondent-State. Copy supplied.

The petitioner-Musafir Bharti has come up in this first anticipatory bail under Section 438 Cr.P.C. in a case bearing FIR No.679 dated 26.07.2018 under Section 20 of the NDPS Act, 1985 Police Station Model Town, District Panipat.

The allegations stem from the claim of the prosecution that an information was received from the landlord-Mahender Singh that he has rented a room in his premises 4-5 months prior to this

occurrence to the present petitioner and Amrika, co-accused/non-applicant. The claim is laid by the landlord that neither the tenant pay the rent and rarely come to the room and he had received an information that some narcotic substance is lying in their room. On the basis of this, the police raided the place and after breaking the locks, got recovered 113 Kgs of *ganja* leading to the registration of the present case.

Learned counsel for the petitioner *inter alia* contends that there is nothing to show that the petitioner was a tenant in the premises and who was never present at the time when the alleged raid is claimed to have taken place. The counsel has made stress on the fact that there has been non-adherence of the mandate of Section 100 Cr.P.C. entitling the petitioner to bail, as his co-accused-Amrika has been allowed regular bail by this Court vide order dated 10.05.2020.

The learned State counsel has raised much opposition that the petitioner is carrying on nefarious activities in sale of narcotics and commercial quantity of recovery has been effected and, therefore, custodial interrogation of the petitioner is very much essential.

Going through the submissions, it is fairly conceded at the bar by the learned State counsel that there is no document to show that the petitioner was a tenant of the informer. The own stand of the landlord as detailed in the FIR shows that he is very much

perturbed over non-payment of the rent. The petitioner was not present at the time of the occurrence nor the State counsel could show any evidence that the petitioner was the occupant of this place from where, the recovery is alleged to have been made. There is no adherence of law in terms of Section 100 Cr.P.C. and in view of the peculiar circumstances, it is a fit case to allow the present petition.

Accordingly, the petitioner is directed to appear before the investigating officer/Magistrate within a period of 15 days from the date of receipt of certified copy of this order and on his doing so, he shall be released on bail to the satisfaction of the arresting/investigating officer till submission of report under Section 173 Cr.P.C. (challan). The petitioner shall continue to join investigation and shall furnish an undertaking that he shall abide by the conditions specified under Section 438 (2) Cr.P.C. Thereafter, he will be permitted to furnish regular bail bonds to the satisfaction of the trial Court.

However, it is made clear that in case, during the course of interrogation of the accused/petitioner, if any recovery of narcotics is made, the State reserves the right to move an application for cancellation of his bail.

The petition stands disposed off accordingly.

31.07.2020
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No