

S.No.105

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

CRM-M-27204 of 2020 (O&M)

Date of Decision:10.09.2020

Rajwinder @ Kala

.....Petitioner

Vs.

State of Haryana

.....Respondent

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IN VIRTUAL COURT
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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Vikas Bishnoi Godara, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.191 dated 13.08.2020 registered under Section 22(C)/27(A)/61/85 of NDPS Act at Police Station City Ratia, District Fatehabad.

The allegation involved in the present FIR in brief are that the Police party was on duty in the area of Sehnal turning; Ratia on a barricade. At that time, two boys were seen coming on a motor-cycle from the side of Village Sehnal. One of those boys, was holding a blue colour polythene put on the oil tank of the motor-cycle. When they came close, the Police tried to stop them, but they tried to flee away. However, after chasing them, the Police managed to stop them. On having suspicion against the said persons, qua possession of the narcotic substance, they were given option to be searched by the Police at the spot or in the presence of some Gazetted Officer. Those boys opted for being searched in presence of a Gazetted Officer. Accordingly, Ramesh Kumar, BDPO, Ratia was informed by the

Police, who arrived on the scene. Thereafter, the search was conducted and during that search, 50 strips, each containing 10 tablets (each) of Tremadol was recovered from those boys. Hence, they were arrested and the FIR was registered.

It is submitted by counsel for the petitioner that the petitioner is not involved in this case. He is not named in the FIR. It is not even the case of the Police that the petitioner was accompanying the co-accused who were arrested from the spot and that he ran away. The name of the petitioner is sought to be involved in the matter only on the basis of an alleged disclosure statement made by the co-accused. The said statement is not admissible in evidence. Hence, there is no material against the petitioner to connect him to the co-accused or to the recovery effected from them. It is further submitted that there is no other case against the petitioner.

Notice of motion.

Mr. R.S. Jhand, Addl. AG, Haryana, accepts notice on behalf of the State.

Learned State Counsel submits that name of the petitioner has specifically surfaced during interrogation of the co-accused; from whom a commercial quantity of contraband has been recovered. During investigation, the co-accused have disclosed the petitioner to be the supplier of the material; which was recovered from them. Hence, the custodial interrogation of the petitioner is duly required to find out the extent of participation of the petitioner in the crime; and also to collect the evidence against him. However, it is not disputed that there is no other case against

the petitioner. But still further, it is submitted that the petitioner belongs to Punjab and the recovery has been effected in the area of Haryana. Therefore, the Haryana police have no motive, reason or occasion to falsely implicate the petitioner.

No doubt, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, it has come on record that the two co-accused of the petitioner have been arrested with a commercial quantity of the prohibited substance. The name of the petitioner has specifically been disclosed by the arrested co-accused. He is alleged to

be the supplier of the contraband recovered from the co-accused. Still further, this Court finds substance in the argument of the counsel for the State that since the petitioner belongs to Punjab and the recovery has been effected in the area of Haryana, therefore, the Haryana Police would not have any motive, reason or occasion to falsely implicate the petitioner. The true extent of the participation of the petitioner in the crime can be ascertained through the custodial interrogation of the petitioner. Although the counsel for the petitioner has submitted that the disclosure statement of the co-accused is not a substantive piece of evidence, however, this argument would be available to the petitioner during the trial. This Court is dealing with the matter at the stage where the evidence is yet to be collected by the Police. Hence, this Court does not find this to be a fit case to exercise its powers under Section 438 Cr.P.C, so as to protect the petitioner against his arrest.

At this stage, counsel for the petitioner submits that now he has been instructed by the petitioner to withdraw the present petition.

Dismissed as withdrawn.

September 10, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No