

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

CRM-M No.28739 of 2020 (O&M)

Decided on: 21.09.2020

Ashok Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Rai, Sr. Advocate
with Mr. Gautam Dutt, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No.0145 dated 12.07.2020 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Cheeka, District Kaithal.

Learned senior counsel for the petitioner has argued that as per the allegations in the FIR, registered on the basis of a secret information that the co-accused Ramesh Kumar, Ashok Kumar and Sher Singh @ Shera are close friends and they are indulged in selling of opium and if a raid is conducted, large quantity of contraband can be recovered from the residential house of Ramesh Kumar. Thereafter, the police reached at the house of Ramesh Kumar for conducting the raid and saw that three young boys are sitting on a motorcycle and are going somewhere. On seeing the police party, they tried to start the motorcycle in order to fled away from the spot. The driver of the motorcycle was apprehended by ASI Pardeep Kumar and other police

officials but two other boys fled away from the spot. The driver of the motorcycle told his name as Ramesh Kumar and he disclosed the names of two other co-accused namely Ashok Kumar (i.e. the present petitioner) and Sher Singh @ Shera. Thereafter, 31 Kgs of opium was recovered from Ramesh Kumar.

Learned senior counsel for the petitioner has further submitted that in fact the petitioner was not present in the area from where the recovery was effected as he was travelling in a newly purchased vehicle having temporary No.HR-2020-TR-2213Z. He had left Patiala for Rajpura in the aforesaid vehicle and had crossed the Dhareri Jattan Toll Plaza at 03:30 Hours and relied upon a receipt issued by the Toll Plaza. On the same day, later on, he crossed another Toll Plaza and was issued another receipt and in both the receipts the car number is mentioned.

Learned senior counsel for the petitioner has further submitted that the petitioner is having some physical disability as in the year 2005 he had met with an accident with multiple fractures on his left thigh and legs and plates are installed in his left thigh and on that account, he is unable to run.

Learned senior counsel for the petitioner has further relied upon the site plan of the house of the petitioner to submit that the house of the petitioner is approached by one street from the main street and the street has a dead end and there is no place to run away from the house of Ramesh Kumar on the other side and it is unbelievable that the police party of 09 persons has allowed the petitioner to fled away from the spot on foot despite his disability.

Learned senior counsel for the petitioner has also submitted that even on behalf of the main accused Ramesh Kumar, an e-mail was sent to Director General of Police, Haryana at 04:01 Am on 12.07.2020 that he has been taken in an illegal custody by the police. This e-mail is sent much prior to the time when the FIR was registered under the NDPS Act.

Learned senior counsel for the petitioner has lastly argued that even previously the petitioner was involved in FIR No.284 dated 14.11.2016 at Police Station Cheeka, District Kaithal in which he was nominated on the basis of a disclosure statement and no recovery was effected and vide order dated 08.03.2017 passed in CRM-M No.44425 of 2016, he was granted the concession of anticipatory bail. It is also submitted that even in this case, nothing is to be recovered from the petitioner.

Notice of motion.

Mr. Sumit Jain, Addl. A.G., Haryana, who is appearing through video conferencing, accepts notice on behalf of the respondent – State and argued that the recovery of 31 Kgs of opium recovered from the co-accused Ramesh Kumar is a heavy recovery and the petitioner was nominated in this case on the basis of his disclosure statement.

Counsel for the State has further argued that the plea of alibi is a matter of trial and therefore, the anticipatory bail should be declined to the petitioner.

After hearing the counsel for the petitioner and going through the contents of the case and the submissions made by learned senior counsel for the petitioner, I find it a fit case, where the

concession of anticipatory bail be granted to the petitioner.

Accordingly, the present petition is allowed and the petitioner is directed to appear before the Investigating Officer within a period of 10 days from today to join the investigation and he shall be released on interim bail on furnishing bail/surety bonds subject to the conditions envisaged under Section 438(2) Cr.P.C.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

21.09.2020	(ARVIND SINGH SANGWAN)	
<i>yakub</i>	JUDGE	
	Whether speaking/reasoned	Yes/No
	Whether reportable:	Yes/No