

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

CRM-M No.29722 of 2020

Date of decision : October 09, 2020

Darshan Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

(IN VIRTUAL COURT)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Mr. Arun Beniwal, DAG, Haryana.

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.343, dated 09.09.2020, under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Fatehabad, District Fatehabad.

Learned counsel for the petitioner has submitted that the petitioner has been dragged in this case only on the basis of the disclosure statement of co-accused. There is nothing with the police to connect the petitioner to the crime.

On the other hand, learned counsel for the State has submitted that there is a heavy recovery of about 23000 tablets of prohibited substance Tramadol from co-accused Inderjit Singh. The co-accused has specifically named the petitioner, by giving details of his participation in the crime. It is further submitted that the investigation is at the initial stage. The police

would need custodial interrogation of the petitioner to corroborate the version given by the co-accused from whom the recovery has been effected, as well as, to collect the evidence qua the involvement of the present petitioner in the crime.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the facts of the present case, this Court finds that the recovery effected from the co-accused in this case is extremely heavy. The said co-accused has specifically named the present petitioner as the supplier of the recovered material, by giving the details of his participation in the crime, which forms part of the record. Therefore, this court does not find any

ex-facie innocence on the part of the petitioner, vis-à-vis the allegations levelled against him. Hence, this Court is not inclined to exercise its powers under Section 438 Cr.P.C., so as to protect the petitioner against his arrest. Still further, this Court finds substance in the argument of learned counsel for the State that since recovery effected in this case is extremely heavy; and the case is at the initial stage, therefore, the police would need custodial interrogation of the petitioner to unearth the true dimensions of the crime committed by the petitioner and to gather the evidence against him. Hence, protecting the petitioner against his arrest, at this stage, would hamper the free and fair investigation on the part of the police.

In view of the above, this Court does not find any merits in the present petition. Dismissed.

(RAJBIR SEHRAWAT)
JUDGE

October 09, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No