

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

CRM-M-34484-2020

Date of decision:-19.11.2020

Akashdeep

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.A.P. Batra, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Akashdeep, aged 45 years, resident of H.No.338, Ward No.30, Patti Malo Ki, Moga, Tehsil and District Moga, an accused in FIR No.157 dated 27.9.2020 for the offences under Sections 22 and 29 of NDPS Act, registered with Police Station City, Moga, District Moga.

Briefly stated, the facts of the case as per the prosecution story are that on 27.9.2020, a police party from Police Station City, Moga led by ASI Sukhwinder Singh travelling in a Government vehicle was present at Jira Road, Dhakoni. At about 1:00 p.m., ASI Sukhwinder Singh received a secret information that Simrandeep Singh alias Sandy son of

late Avtar Singh, resident of House No.203 Ward No.5, Street No.1, Baba Ishar Singh Nagar, Moga was indulging in selling intoxicant tablets and he had brought such tablets from an unknown person on that day, travelling on Moga to Lande Ke Road on his Aactiva scooter bearing registration No.PB29Y-2883, light black colour and if a picket was laid, he could be caught red handed with the contraband. Information being credible and reliable disclosing commission of offence under Section 22 of NDPS Act, ASI Sukhwinder Singh sent ruqa to police station and a picket was accordingly laid. Simrandeep Singh alias Sandy was apprehended. The contraband in the form of 3500 tablets of Tramadol Hydrochloride along with Rs.1,100/- in cash were recovered from him. Simrandeep Singh alias Sandy was interrogated, during the course of which, he suffered a disclosure statement that he had purchased those tablets from Akashdeep (present petitioner), in that way, the present petitioner was nominated in the case and Section 29 of the NDPS Act was added.

Apprehending his arrest in this case, the petitioner had approached Judge, Special Court, Moga seeking grant of pre-arrest bail by filing an application, however, his such request was declined by learned Judge, Special Court, Moga vide order dated 13.10.2020 As such, the petitioner has approached this Court asking for similar relief.

Notice of the petition has been given to respondent – State. Mr.J.S. Ghuman, DAG, Punjab has appeared on behalf of respondent – State and accepts notice on its behalf. He opposes the petition.

I have heard learned counsel for the parties besides going

through the records.

The main arguments advanced by learned counsel for the petitioner were that petitioner is a chemist; he was nominated on the basis of statement of co-accused, which is not admissible; furthermore, no recovery has been effected from the petitioner; therefore, there is nothing to connect the petitioner with the recovery effected from Simrandeep Singh alias Sandy. The petitioner is ready and willing to join the investigation. Therefore, he be granted concession of pre-arrest bail.

The petition is being vehemently contested by State counsel.

After hearing learned counsel for the parties and going through the record, I find that the petitioner is not entitled to grant of pre-arrest bail.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

As far as argument of learned counsel for the petitioner that petitioner is a chemist, who can legally store the medicines and drugs is concerned, there cannot be any dispute with such proposition but the drugs and medicines stored must be as per the licence granted to him and the stock should be duly accounted for. It is not the case of the petitioner that the contraband recovered forms part of his legal stock. No document in that regard has been placed on record.

Furthermore, regarding the contention raised that no recovery has been effected from the petitioner, the same does not help the petitioner

in any way since the allegations against him are that he had supplied the contraband, which had been recovered from the possession of his co-accused Simrandeep Singh alias Sandy. Since the petitioner is alleged to be supplier of the contraband, he cannot be granted any benefit for the reason that recovery of contraband had not been effected from him but from his co-accused. The petitioner must explain as to from where he had procured the contraband and how it was given to Simrandeep Singh alias Sandy, the price thereof received by him from Simrandeep Singh alias Sandy and the earlier such transactions entered into by him.

The contention of learned counsel for the petitioner that since the petitioner has been named on the basis of statement of co-accused, which is inadmissible in evidence, therefore no proceeding can take place against the petitioner, is also without merit. Such disclosure statement of co-accused can certainly be taken into consideration for providing lead in investigation and even during trial it is admissible under Section 30 of the Indian Evidence Act.

Section 30 of the Indian Evidence Act provides that when more person than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Furthermore, the petitioner is stated to be involved in two more cases under NDPS Act, one registered at Police Station City, Barnala and other at Moga, that means he is a habitual offender.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely found to be necessary and essential to find out from where he had procured the contraband and to whom the same was to be supplied. The names of his customers are also to be found out. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

The recovery in this case amounts to commercial quantity.

Section 37 of NDPS Act reads as under:

Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

There is no reason available to this Court to record

satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

Thus finding no merit in the petition, the same stands dismissed.

19.11.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No