

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

CRM-M-35482-2020

Date of decision:-3.11.2020

Surender

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.B.S. Mamli, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

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 – Surender, aged 32 years, resident of village Dumar Khan Khurd, District Jind, an accused in FIR No.0254 dated 20.10.2020 for the offence under Section 15 of NDPS Act (Section 27-A of NDPS Act subsequently added), registered with Police Station City, Ratia, District Fatehabad.

Briefly stated, the facts of the case as per the prosecution story are that on 20.10.2020, one Raj Kumar alias Raju when apprehended by police party within jurisdiction of Police Station City, Ratia, was found to be in possession of 12 kgs. of poppy straw. He was arrested in the case.

The recovered contraband was taken into possession. Formal FIR in the

matter was registered. Investigation in the case got started, during the course of which, it transpired that the recovered contraband had been supplied to Raj Kumar @ Raju accused by the present petitioner Surrender, in that way he was nominated as an accused in this case.

Apprehending his arrest in this case, the petitioner had approached the Court of Special Judge under NDPS Act, Fatehabad seeking grant of pre-arrest bail by filing an application, however, his such request was declined by learned Special Judge under NDPS Act, Fatehabad vide order dated 27.10.2020. As such, the petitioner has approached this Court asking for similar relief.

Notice of the petition is given to respondent – State. Mr.Tanuj Sharma, AAG, Haryana 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 present case had been registered under Sections 15 as well as 27-A of NDPS Act. The petitioner is said to be supplier of the contraband, which had been recovered from the possession of Raj Kumar @ Raju accused. Though an argument had been advanced on behalf of learned counsel for the petitioner that the petitioner is not named in the FIR and no recovery had been effected from him but I find little merit in the said contention. The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. It is only during investigation after registration of the FIR that the investigating agency probe the matter and find out as to whether any cognizable offence is

disclosed against the accused.

Here after Raj Kumar @ Raju accused was arrested and was interrogated, he had disclosed the name of the present petitioner as the person from whom, he had procured the contraband. The argument advanced that statement of co-accused is inadmissible is 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.

It has been noticed that most of the times only the carriers of the contraband are apprehended, whereas big fish i.e. the suppliers escape arrest or manage to avoid custodial interrogation on the plea that their names do not figure in the FIR and no recovery was effected from them. Since the investigating agency does not get an opportunity for custodial interrogation of the supplier, further lead in the matter from where such supplier had procured the contraband and to whom he had been supplying the same thereafter, cannot be obtained, resultantly the drug cartels do not get smashed. Such suppliers came up with straight faces stating that they have nothing to do with the recovery and their involvement in the crime may not be taken by not considering the statement of the co-accused actually found in possession of the contraband. Unless the suppliers are hauled up and necessary information obtained from them regarding the network, the menace of drug trafficking will not be brought under control.

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.

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 stock of poppy straw 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.

Furthermore, 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.

3.11.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No