

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3129 of 2021

DATE OF DECISION :- January 22, 2021

Mukesh

...Petitioner

Versus

State of Haryana

...Respondent

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

Present:- Mr. Vinay Kumar Pandey, Advocate for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

The case has been taken up through Video Conferencing.

This petition for pre-arrest bail has been filed by petitioner Mukesh, aged about 28 years, son of Khamani Ram, resident of 849 Kher Road, Nangla Masani, Delhi Gate, Aligarh (U.P.).

Briefly stated the facts of the case as per prosecution story are that, on 10.6.2020, a police party from police station Punhana led by SI Mahinder Singh on receipt of a secret information, had intercepted pickup vehicle white in colour bearing registration number UP 85 BT 2640 driven by accused Radha Raman and search of that vehicle revealed 40 boxes of cough syrup. The accused could not produce any bill or license for possession of such boxes of cough syrup. Formal F.I.R in the matter was registered and investigation in the case started. He was arrested in this case.

During the course of investigation accused Radha Raman was interrogated and he disclosed that he had purchased the same from the present petitioner

Mukesh for an amount of Rs.1,44,000/-. In that way petitioner Mukesh was nominated in this case.

Apprehending his arrest, he had approached the Court of Sessions at Mewat by moving an application for pre-arrest bail. His such application was assigned to Additional Sessions Judge, Mewat, who vide order dated 17.12.2020 dismissed the same. The operative part of the order is as under :-

“The allegations against the accused is that he has supplied 40 boxes of cough syrup to co-accused Radha Raman for an amount of Rs.1.44 lacs. The co-accused was apprehended. He had no bills of the said cough syrup. The cough syrup contains codeine phosphate, which is a narcotics substance has taken the schedule under the NDPS Act. The cough syrup seized contained 960 grams of codeine phosphate, which is an intermediate quantity. The affidavit of the co-accused Radha Raman, to the effect that he never disclosed the name of the petitioner, cannot be relied upon. Prima facie the co-accused Radha Raman was indulging in illegal activities by transporting large amount of cough syrup. Similarly, the petitioner has prima facie supplied large quantity of cough syrup without any billing. The said cough syrup contained intermediate quantity of cough syrup. Judgments relied upon by the learned defence counsel are in the nature of obiter dicta and not ratio decidendi. Custodial interrogation of the petitioner is required in the present case, since he is prima facie the main supplier of the cough syrup and supplied 40 boxes (4800 bottles) of the same

to the co-accused Radha Raman, who was apprehend.”

Feeling aggrieved, the petitioner has approached this Court by way of filing the present petition, notice of which was given to the State.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

I find that there is no merit in the present petition. The recovery effected in this case in the form of 40 boxes of cough syrup i.e. 4800 bottles. The cough syrup contains codeine phosphate which is a narcotics substance. The custodial interrogation of the petitioner is necessary to find out as to from where he had procured such large number of cough syrup, the past transactions and to which other persons he had supplied same and for what consideration. The recovery of the money paid by accused Radha Raman to him is also to be got effected. In case custodial interrogation of petitioner is denied to the investigating agency that shall leave many loop holes, gaps and lacuna in the investigation adversely effecting it which is most uncalled for. Though learned counsel for the petitioner has contended that name of the petitioner had cropped up during interrogation of main accused Radha Raman, however, Radha Raman has submitted an affidavit that he had not named the present petitioner being supplier of the contraband as such petitioner is not connected with the recovery and should be granted anticipatory bail. But I am not impressed by this contention. It seems that petitioner, while being on bail has started tempering with the prosecution evidence procuring affidavit of Radha Raman in that regard. This affidavit rather than helping the petitioner goes against him pointing out that he is manipulating the things and adversely effecting the investigation. The statement of co-accused naming the petitioner being

supplier of the contraband can certainly be taken into consideration for providing lead in investigation as well as in terms of Section 30 of the Evidence Act. The link of the petitioner with the recovered contraband clearly comes out to be there being supplier of the same to Radha Raman. With regard to contention of learned counsel for the petitioner that recovery of codeine phosphate does not constitute any offence under NDPS Act, 1985, therefore, the petitioner is entitled to pre-arrest bail, that aspect has already been considered and properly dealt with by learned Additional Sessions Judge, Mewat, therefore, while deciding the present petition for grant of anticipatory bail such submission touching the merits of the case is not of much help to the petitioner.

Therefore, I find no merit in the petition, the same stands dismissed.

(H.S. MADAAN)
JUDGE

January 22, 2021

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No