

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

CRM-M-3620-2021(O&M)

Date of decision:-6.4.2021

Ajay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.R.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 – Ajay Kumar, aged about 23 years, resident of Street No.3, near Ram Bagh, Ward No.4, Mansa, District Mansa, an accused in FIR No.0259 dated 23.10.2020, under Section 21(b) of NDPS Act (Section 27-A of the 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 Lakhwinder Singh @ Lakhu was apprehended by the police on 23.10.2020 in the area within the jurisdiction of Police Station City, Ratia and he was found in possession of 9 gms. of heroin. He was arrested in this case. After registration of the FIR, the investigation in the case started, during the course of which, it transpired that the contraband recovered from Lakhwinder Singh @ Lakhu had been supplied to him by the present petitioner Ajay Kumar.

After being nominated in this case, apprehending his arrest, the present 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 application was dismissed by the said Court vide detailed order dated 12.1.2021. As such, the present petitioner has approached this Court by way of filing the instant petition asking for the similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the petitioner has contended that petitioner has nothing to do with the contraband recovered from Lakhwinder Singh @ Lakhu and he has simply been roped in on the basis of disclosure statement made by said Lakhwinder Singh @ Lakhu, which is not admissible in evidence. He further contended that no recovery has been effected from the present petitioner, as such he be granted concession of pre-arrest bail.

Whereas the request is being opposed vehemently by the State counsel.

After considering the rival contentions, I find that no case for grant of anticipatory bail to the petitioner is made out.

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 arrest and custodial interrogation.

Here the petitioner booked for the offences under the NDPS Act including one under Section 27-A, which deals with punishment for financing illicit traffic and harbouring offenders. Section 37 of the Act clearly provides that when a person is accused of an offence under Section 27-A of the Act and he files an application for his bail, which is opposed by the Public Prosecutor, he shall not be released on bail unless 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. Keeping in view the facts and circumstances of the case, I do not see any reason to record such satisfaction. Furthermore, though the bar basically relates to grant of regular bail, but the scope of grant of anticipatory bail is much less and is to applied there also. For that reason alone, this petition is bound to fail.

As regards the contention of learned counsel for the petitioner that the petitioner has been nominated on the basis of statement of co-accused Lakhwinder @ Lakhu, which is not admissible in evidence, such contention is not correct.

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. Such disclosure statement of co-accused can certainly be taken into consideration for providing lead in the investigation.

With regard to another ground put forward on behalf of the petitioner/accused to the effect that no recovery had been effected from the petitioner in the instant case and he has been booked being supplier of the contraband, which had been recovered from Lakhwinder Singh @ Lakhu, merely for the reason that petitioner himself was not found in possession of the contraband does not absolve him of criminal liability on account of supplying the contraband to Lakhwinder Singh @ Lakhu, which had been recovered from him by the police.

Curtailling and restricting the investigation by allowing pre-arrest bail to petitioner would definitely result in preventing the investigating agency from discovering material facts from interrogation of the petitioner, which may lead to busting of the cartel running the drug trafficking.

As regards various judgments referred to by learned counsel for the petitioner, here we are dealing with a petition for grant of pre-arrest bail and there cannot be any settled precedent in such type of cases. Each case is to be examined on its own merits considering facts and

circumstances of the case and various factors, which need to be taken into view are like seriousness and gravity of the offence complained off; the role played by the petitioner/accused in commission of the offence; the past criminal record, if any of the petitioner/accused; the likelihood of his/her influencing the prosecution witnesses by giving threat or inducement to such witnesses; the chances of petitioner/accused absconding and delaying the trial. The age, social standing etc. are also to be considered because in certain cases persons of young age as well as aged persons, females are treated with some leniency for the purpose of grant of bails. Since the facts and circumstances of each case are different so are the antecedents and other features of an accused, therefore observations made while deciding bail applications of an accused in a particular case cannot be taken as binding ratio in the other case having altogether different facts and factors relating to accused in that case to be also different.

In **Prabhakar Tewari Versus State of U.P. &Anr, 2020(1) CrLCC 722** by the Apex Court, it had been observed that when there are allegations of grave and serious offence and several criminal cases against accused are pending that could not be basis to refuse prayer for bail. In that case, a person, accused of murder had been granted bail by the trial Court, which was challenged before the Apex Court and such appeal was dismissed observing that High Court had exercised its discretion in granting bail to accused on considering the relevant material. Whereas, the case in hand is one for grant of pre-arrest bail.

As regards **Tofan Singh Versus State of Tamil Nadu, 2021**

(1) RCR(Criminal) 1, wherein it was observed that any confessional statement made to police officer in a case under NDPS Act is not admissible in evidence. Here facts are quite different. We are dealing with statement made by an accused before the Investigating Officer during investigation of the case, in which he had named the present petitioner as supplier of the contraband recovered from him. That statement can certainly be taken into consideration under Section 30 of the Evidence Act.

Judgments Deepak Sharma Versus State of Punjab, 2013(4) RCR(Criminal) 622, Amarjeet Singh @ Babbu Versus State of Haryana, 2011(2) RCR(Criminal) 75, Jatinder Singh @ Kaka Versus State of Haryana, 2018(4) Law Herald 2854 and Jaswinder Singh Versus The State of Haryana, 2014(13) RCR(Criminal)159 passed Single Benches of this Court and Zorawar Singh Versus State of J&K through SHO Police Station Lakhampur, 2018(2) DC (Narcotics) 327 passed by Jammu & Kashmir High Court do not come to help of the petitioner in any way, in view of the detailed discussion above.

It needs to be mentioned here that though in a criminal trial for basing conviction of an accused, who has been nominated by a co-accused in his interrogation while relying upon Section 30 of the Evidence Act some corroboration may be looked for but here we are not dealing with a trial but grant of pre-arrest bail to the petitioner, who has been nominated as supplier of the contraband by his co-accused Lakhwinder Singh @ Lakhu and as already observed this statement can certainly be looked into for providing lead in the investigation. The petitioner/accused

cannot come up with a straight face and say that since statement of co-accused Lakhwinder Singh @ Lakhu is not admissible, his involvement in the case does not come out to be there.

As regards the corroboration to the statement made by co-accused in terms of Section 30 of the Evidence Act, that would come when custodial interrogation of the petitioner is allowed to the investigating agency and petitioner discloses vital information within his knowledge, which may lead to recovery of more contraband and incriminating material resulting in disclosure of names of the persons hire in hierarchy controlling the drug trade in the region. Shutting the doors of custodial interrogation upon investigating agency, which may help the investigating agency in unearthing material facts and busting the drug racket is unwarranted and uncalled for. It is in the public interest also that drug addiction and drug abuse in the region are brought under a check so that precious lives of people especially the youth can be saved from further damage. The particular of a person, accused of indulging in criminal activities harmful to the society can certainly be curtailed in the public interest as such no criminal can be allowed to have a free run and cause disturbance and chaos in the society.

It needs to be observed here that in the written reply filed on behalf of the State, it has been mentioned that in addition to the present case, the petitioner/accused is involved in another criminal case bearing FIR No.208 dated 12.6.2019, under Section 21 of NDPS Act registered at Police Station Bhuna, District Fatehabad in terms of which petitioner along with another accused Himanshu was found in conscious possession

of 10 gms. of heroin and petitioner is on bail in that case. It comes out that the petitioner/accused is in habit of indulging in drug trafficking. However, that fact alone has not been considered for the purpose of disposal of the present petition.

Furthermore, the custodial interrogation of the petitioner/accused is required for complete and effective investigation to find out as to from where the contraband had been procured and to which persons, it was to be supplied, the previous dealings, in which the present petitioner had indulged etc. 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, since the investigation would be curtailed to a great extent and the investigating agency would not be able to reach the bottom of the things to find out the material facts and then to act against the persons running the drug racket in order to curb the alarming extent of drug abuse and drug addiction amongst the people of the State.

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.

Therefore, the facts and circumstances of the case do not call for acceptance of the petition. The same is doomed for failure and is

dismissed accordingly.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

6.4.2021

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No