

Bharat

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sunil Saharan, Advocate, for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

AMOL RATTAN SINGH, J. (ORAL)

On 08.02.2021, the following order had been passed by this
court:-

“By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.292, dated 18.09.2020, having been registered at Police Station Agroha, District Hisar, alleging therein the commission of an offence punishable under Section 18 of the NDPS Act, 1985.

Learned counsel for the petitioner submits that even the person arrested at the spot allegedly with 130 grams of opium, i.e. Amit Kumar, was admitted to bail by this court vide an order passed on 24.11.2020 in CRM-M-33648 of 2020.

He submits that it is upon only an alleged disclosure statement made by the aforesaid Amit Kumar, that the petitioner has been arraigned as an accused and now his house has been raided time and again by the police to arrest him.

Notice of motion is issued, with Mr. B.S.

Virk, learned DAG, Haryana, accepting notice on behalf of the respondent State, on the asking of the court.

He submits that as per his instructions the petitioner has been named in a disclosure statement made by the aforesaid Amit Kumar, with the quantity allegedly recovered from Amit Kumar however being below commercial quantity.

Upon further query to learned State counsel, he again submits on instructions, that there is no other criminal case registered against the petitioner.

Adjourned to 23.03.2021.

Without making any comment on the merits of the case, the petitioner is directed to join investigation within a week and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaqa Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C. If the arresting officer does not join the petitioner in investigation, he would appear before the learned Illaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.”

Thereafter, on 14.09.2021 the following order had been passed:-

“Case heard via video conferencing.

Pursuant to the order dated 08.02.2021, learned State counsel submits, on instruction, that though the petitioner has joined investigation, he is not co-operating in the matter.

Adjourned to 08.10.2021.

A gazetted officer is directed to file a

detailed reply stating therein as to in what manner he is not co-operating.

Naturally, if this court comes to the same conclusion that the petitioner did not cooperate, the petition would be liable to be dismissed on that date itself.

Interim order to continue till then.”

Pursuant thereto an affidavit of the Deputy Superintendent of Police, Hisar-II, dated 01.10.2021, has been filed on behalf of the respondent-State, wherein it is stated that the petitioner is not cooperating in the investigation, inasmuch as the petitioner stated during interrogation that he does not know the prime accused, Amit, from whom 130 grams of opium are stated to have been recovered (as per the case of the investigating agency), whereas there were found to be telephonic conversations between them.

Learned counsel for the petitioner points to Annexure R-3 to the said reply, which is a chart showing the questions and answers put to the petitioner, even as per the investigating agency itself.

A perusal thereof shows that the first question put to the petitioner was whether he knew the accused Amit or not, to which he replied that he had known him for the past 04 years.

It is indeed a very sorry state of affairs that a gazetted officer is filing a completely false affidavit before this court, at least as regards that issue, though of course it is to be noticed that in the same paragraph (6) of the reply, he has also stated that certain relevant questions were put to the petitioner, which he did not answer satisfactorily.

Keeping in view the fact that the petitioners' name was allegedly disclosed in police custody by the aforesaid Amit and the quantity of opium stated to have been recovered from Amit is well below commercial quantity, and especially seeing the fact that the petitioner has never denied his contact with Amit, with the DSP stating something factually incorrect even as per the annexure annexed with the his own affidavit, the petition is allowed with the order dated 08.02.2021 made absolute, on the same terms and conditions.

October 08, 2021	(AMOL RATTAN SINGH)
nitin	JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	No.