

CRM-M-10344-2021

Date of Decision:06.04.2021

Rattan Lal

.....Petitioner

Vs.

State of Haryana

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Anmol Puri, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

Case heard by video conference.

On 05.03.2021, the following order had been passed:-

“Case heard by video conference.

By this petition, the petitioner seeks the concession of 'anticipatory bail' under the provisions of Section 438 Cr.P.C., upon FIR No.154, dated 24.04.2020, having been registered at Police Station, Civil Lines, District Hisar, alleging therein the commission of offences punishable under the provisions of Section 188 of the IPC and Sections 15/18 of the NDPS Act, 1985.

Learned counsel for the petitioner submits that the petitioner has only been arraigned as a co-accused on a disclosure statement allegedly made in police custody and therefore, with no other criminal case ever registered against him, he may be admitted to bail.

Notice of motion.

On the asking of the Court, Mr. B.S.Virk, DAG, Haryana, accepts notice on behalf of the respondent State.

A copy of the petition be e-mailed to him today itself by learned counsel for the petitioner.

Upon query to him, he does not deny that, as per his instructions, there is no other criminal case registered against the petitioner and in fact he has not been named in the FIR but was arraigned as an accused upon such disclosure statement of the persons who were apprehended at the spot with 2.6 kgs. of opium and 5 kgs of poppy husk. That being so, the petitioner is directed to join investigation within one week, and if, upon him so joining, he is sought to be arrested, he shall be released on interim bail, upon his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Duty Magistrate, till the next date of hearing.

He shall also comply with all 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 Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join the petitioner in investigation, in terms of the order of this Court.

Adjourned to 06.04.2021.”

Pursuant to the said order dated 05.03.2021, learned State counsel submits, on instructions, that the petitioner has joined investigation. However, he submits that he is not co-operating in the investigation.

Upon query as to how he is not co-operating in such investigation, learned State counsel submits that he is not disclosing the source from which he purchased the contraband as was seized from two persons, i.e. Rajbir and Raju (as per the FIR), with the said contraband stated to be 2.6 kgs of opium and 5 kgs of poppy husk.

The argument is not understood in as much as no accused can be forced to implicate himself and though of course if, upon a disclosure made to the police, a recovery is made, then such disclosure statement as also the recovery may be admissible in evidence, however, a simple statement made to the police (without any recovery) would normally not be admissible in evidence.

In this case, the recovery of the contraband already having been made, it is slightly difficult to comprehend as to what recovery could be made even if the petitioner were to disclose on interrogation (if he were not on anticipatory bail), with such recovery already having been made.

Consequently, in terms of Section 37(1)(b)(ii) of the NDPS Act, 1985, in view of the above but without making any comment on the actual merits of the case, which obviously would proceed as per evidence otherwise

gathered and led before the trial court (at the appropriate stage), the petition is allowed, with the order dated March 05, 2021, admitting the petitioner to interim bail, made absolute, on the same terms and conditions.

April 06, 2021

dharamvir/

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO