

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 13366 of 2021 (O&M)

Date of decision : 28.5.2021

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Naveen Kumar @ Neetu

.....Petitioner

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ram Kumar Saini, Advocate for the petitioner

Mr. Saurabh Girdhar, Assistant Advocate General,
Haryana

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

CRM-15127-2021

This is an application for pre-ponment of hearing in the
main petition which is fixed for 17.8.2021.

Heard.

The application stands accepted. The main petition is
pre-poned and taken up today.

Main case.

This petition for pre-arrest bail under Section 438 Cr.P.C.,
has been filed by petitioner – Naveen Kumar @ Neetu, aged about
42 years son of Radhey Shyam, r/o House No 7373, Ward No.2, Near

Anaj Mandi, Bhuna, Tehsil and District Fatehabad, an accused in case FIR No. 43 dated 23.2.2021 for offences under Sections 20(b) (ii) C, 27-A, 29 of the NDPS Act, 1985, registered at Police Station Sadar, Fatehabad.

In nutshell, the facts of the case, as per the prosecution story are that, on 23.2.2021, Ram Niwas @ Kala and Dharamvir Singh – co-accused of the present petitioner, were found to be in possession of 2 quintal 1 kg 450 grams of ganja in a car, when they were apprehended by the police, within the jurisdiction of Police Station Sadar, Fatehabad. During the course of investigation, it came out that 50 kg of ganja belonged to Dharamvir Singh, 50 kg to Kuldeep @ Figo, 50 kg to Himanshu and 50 kgs to Naveen @ Neetu – present petitioner. It came out that all of them had entered into a conspiracy to procure the contraband from Andhra Pradesh. It further came out that petitioner alongwith Kuldeep @ Figo and Himanshu were travelling in a Swift Dezire car belonging to the petitioner, which was escorting the Etios car bearing registration No. HR 22-S-8269, in which ganja was loaded and after reaching Hisar petitioner alongwith Kuldeep @ Figo and Himanshu in Swift Dezire car went to Bhuna from Hisar, whereas the police had apprehended the Etios car. The involvement of the petitioner was found to be there on the basis of call details between him and his other co-accused and interrogation of the accused, who were arrested alongwith the contraband.

Apprehending his arrest in this case, petitioner -accused

Naveen Kumar @ Neetu had approached the Court of Special Judge under the NDPS Act, Fatehabad, for grant of pre-arrest bail by filing an application in that regard, which was however dismissed vide order dated 15.3.2021. Feeling aggrieved, he has knocked at the door of this Court, praying for grant of similar relief, by way of filing the present petition, which request is being opposed by learned State counsel.

I have heard, learned counsel for the petitioner, learned State counsel, besides going through the record and I find that the petition is doomed for failure.

Although the petitioner is not named in the FIR but that does not result in grant of any advantage to him because FIR is not an encyclopedia of all the events and the only purpose of recording of the FIR is to set the criminal machinery into motion. It is only during the investigation that the complete story gets unfolded. During the course of investigation, active involvement of the petitioner in drug peddling came out to be there.

Contention raised by learned counsel for the petitioner that petitioner was named on the basis of statement of co-accused, which is inadmissible, is erroneous. Section 30 of the Indian Evidence Act, clearly provides that when more persons are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some 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.

Though, this section deals with value of confession made by one accused when several accused are being tried together. When such confession affects the maker thereof as well as other persons, the natural inference is that if such confession, if proved can be relied upon in trial, then it cannot be ignored during the investigation, which is a pre-trial stage. The investigation is meant to find out the truth with regard to commission of an offence and information provided by an accused during his interrogation by the investigating officer cannot be discarded outrightly except in the cases, which have been specifically dealt with by the Act. Thus the confession is very much admissible under Section 30 of the Indian Evidence Act and it can be taken into consideration.

Furthermore, the contraband recovered in this case comes within the definition of commercial quantity and furthermore, the petitioner has been booked for offences under Sections 20, 27-A, 29 of the NDPS Act. The bar of Section 37 of the NDPS Act, clearly comes into play which provides that no person accused of offence punishable under Sections 19, 24 or Section 27-A and also for offences involving commercial quantity, shall be released on bail where the public prosecutor opposes the application for such release 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.

I do not see any reason to record the requisite satisfaction.

Therefore, if the regular bail cannot be granted to a person accused of

offence under Section 27-A or relating to commercial quantity, there is no question of pre-arrest bail being granted to such culprit. The scope of anticipatory bail is much limited as compared to that of regular bail. If Section 37 of the NDPS Act is applicable to regular bail then in view of this provision, bar to grant of anticipatory bail is also there.

The custodial interrogation of the petitioner is required for complete and effective investigation of the case, so as to find out from where he had been procuring the contraband and who are his associates and customers; the number of past transactions entered into by him; where he used to invest the proceeds of drug money etc. In case the custodial interrogation of the petitioner is denied to the investigating agency, that would leave many lacuna, loopholes and gaps, adversely affecting the investigation, which is not called for.

Thus the petition is without any merit and is dismissed accordingly.

However, nothing discussed above shall have any bearing on the merits of the case.

28.5.2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No