

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

CRM-M-14947-2021

Date of decision:-29.6.2021

Kuldeep Kumar @ Chawala

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.Rahul Bhargava, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

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 – Kuldeep Kumar @ Chawala, aged about 35 years, an accused in FIR No.25 dated 26.2.2021, under Sections 21 and 29 of NDPS Act, registered with Police Station verka, District Police Commissionerate, Amritsar.

Briefly stated, the facts of the case as per the prosecution story are that on 26.2.2021, a police party from Police Station Verka, Amritsar City while proceeding from Mudhal Bus stand towards the village had intercepted a scooter coming from village Mudhal side, which was being driven by Rahul Dev alias Raja with Shamsheer Singh @ Shera as pillion rider; on seeing the police party Rahul Dev alias Raja had taken out a polythene envelope having contents from the right pocket of his pyjama and tried to throw it on the road; both such persons were arrested; the polythene envelope thrown away by Rahul Dev @ Raja was found to contain 10 gms. of heroin. Formal FIR in the matter was recorded. Both the accused were arrested in this case. The investigation in the case started, during the course of which from the disclosure statements made by above-said accused, it came out that they used to purchase heroin from the present petitioner Kuldeep Kumar @ Chawala, related to accused Rahul Dev @ Raja being son of his aunt and further they would sell it to the customers. In that way, the present petitioner was nominated as an accused in this case.

After being nominated in this case, apprehending his arrest, the present petitioner had approached the Court of Sessions at Amritsar seeking grant of pre-arrest bail by filing an application, which was assigned to Additional Sessions Judge, Amritsar. However, his such application was dismissed by the said Court vide detailed order dated 19.3.2021. 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.

The main thrust of arguments advanced by learned counsel for the petitioner has been that the accused has been nominated in the disclosure statements of co-accused Rahul Dev alias Raja and Shamsher Singh @ Shera, which are inadmissible in evidence; that no recovery has been effected from the petitioner and the he is ready and willing to join the investigation. Therefore, the petitioner be granted concession of pre-arrest bail.

Learned State counsel has controverted such contentions of learned counsel for the petitioner stating that the disclosure statements of co-accused are admissible in view of Section 30 of the Evidence Act and petitioner Kuldeep Kumar @ Chawala has got past criminal record being involved in two other FIRs as per details below:

- (i) FIR No.118 dated 8.7.2019, under Section 420 IPC, 13/3/67 Gambling Act, Police Station Majitha, Amritsar-Rural (under investigation).
- (ii) FIR No.07 dated 8.1.2021, under Section 21 of NDPS Act, Police Station Majitha, Amritsar Rural (Recovery 02 gm. Heroin – under investigation).

According to the State counsel the custodial interrogation of the petitioner is required for complete and effective investigation.

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.

As regards the contention of learned counsel for the petitioner that the petitioner has been nominated on the basis of disclosure statements of co-accused, which are inadmissible 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 statements of co-accused can certainly be taken into consideration for providing lead in the investigation.

The custodial interrogation of the petitioner is essential to find out from where he had been procuring the contraband and to which other persons he had been supplying the same and also to find out the drug cartel and chain of supply. In case custodial interrogation of the petitioner is denied to the investigating agency, it shall not be able to find out the further links in the chain and to know about the drug peddlers higher in hierarchy. The drug peddlers are cautious and careful not to get themselves caught with the contraband rather as has been noticed they generally engage unemployed persons, drug addicts and poor persons to act as carriers so as to deliver the drugs to the consumers. Therefore, their

not actually been found in possession of narcotics and drugs does not point out towards their innocence when other incriminating circumstances are there to show their involvement. The factum of petitioner having two other criminal cases registered against him rather goes to show that he has been treading the path of crime.

As regards offer of the petitioner that he is ready and willing to join the investigation with a prayer for interim bail, it has to be taken note of that custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge, which would be inculpatory for him.

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.

29.6.2021

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(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**