

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

CRM-M-16217-2021
Date of decision:-5.8.2021

Ravi @ Chinky

...Petitioner

Versus

State of Haryana

...Respondent

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

Present: Mr.Gautam Dutt, Advocate
for the petitioner.

Mr.Gaurav Bansal, 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 – Ravi @ Chinky, aged about 28 years, resident of village Kailash, Tehsil and District Karnal, an accused in FIR No.0605 dated 21.11.2020 under Sections 20 and 25 of NDPS Act, registered with Police Station Gharaunda, District Karnal.

In nutshell, the prosecution story is that on 21.11.2020, a

police party from Police Station Gharaunda led by P/SI Bijender Singh while present at bus stand Gharaunda in a private vehicle in connection with patrolling duty and crime checking, received a secret information that Randip son of Karam Singh, resident of village Kailash, District Karnal, Parmod son of Satpal, Vinod son of Lakhmi, Dharambir son of Hari Ram, all residents of village Taprana, District Karnal were indulging in trafficking of drugs in the form of selling ganja; that Randip, Vinod, Parmod and Dharambir had gone to Orissa for bringing ganja in a tractor make Eicher of red colour on which words ACC Gold were written along with dumper and car bearing registration No.HR05-AE-8065 make SX4; that such persons were returning from Orissa along with ganja in the dumper; the car being in front followed by a tractor and dumper. Finding the information to be reliable, P/SI Bijender Singh prepared notice under Section 42 of NDPS Act and sent it to the police station. Thereafter, the police party laid picket on GT Road, Gharaunda Cut in front of PWD Rest House. After some time, a car bearing registration No.HR05-AE-8065 make SX4 was spotted coming. It was got stopped and occupants of the car were apprehended. The driver of the car disclosed his name as Randip Singh son of Karam Singh, resident of village Kailash, whereas person sitting beside him on the front seat gave his name as Parmod son of Satpal, resident of village Taprana, District Karnal. A tractor make Eicher of red colour was also spotted coming. It was got stopped. Behind this tractor one canter of red colour, on which ACC Gold was written, was attached. The tractor was being driven by Vinod son of Lakhmi, resident of village Taprana, whereas Dharambir son of Hari Ram, resident of

village Taprana was sitting on the side seat of the tractor. Suspecting the car, tractor and canter to be carrying narcotic substance, P/SI Bijender Singh served notice under Section 50 of NDPS Act upon the accused Randip, Parmod, Vinod and Dharambir. All of them opted to get the search conducted in presence of a gazetted officer, therefore DSP, Gharaunda was called to the spot. The personal search of accused was carried out, however nothing incriminating was recovered. The checking of the car did not result in recovery of any drugs or narcotics. The canter which was attached behind the tractor, was checked and it was found to contain 33 bundles tied with KHAKHI tape. Those bundles were containing ganja. The total weight of recovered ganja came to be 230 kgs. The recovered contraband was taken into possession after converting it into sealed parcel. The recovered ganja, car, tractor and canter were taken into police possession. Ruqa was sent to the police station, on the basis of which formal FIR was recorded. Accused Vinod in pursuance of disclosure statement got recovered tractor bearing registration No.PB13-AP-6415 from his residential house situated at village Taprana. The tractor was taken into police possession. During investigation, accused Umakant alias Pujari produced bank account details showing the transaction for purchase of ganja, which were taken into possession by the police. Accused Vishal and Ravi alias Chinky (present petitioner) were nominated in this case.

After being nominated in this case, apprehending his arrest, the present petitioner had approached Additional Sessions Judge/Judge, Special Court, Karnal seeking grant of pre-arrest bail by filing an

application, however, his such application was dismissed by that Court vide detailed order dated 6.4.2021. 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 resisted 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 the petitioner is not named in the FIR, rather his name cropped up in the disclosure statement of the co-accused, which is not admissible in evidence. He has further contended that the prosecution wants to link the present petitioner with the recovery on the basis of call details and bank record, however the call details relate to 10.11.2021 i.e. about 11 days prior to the date of recovery and with regard to deposit of Rs.60,000/- in the bank account of co-accused Umakant @ Pujari by the present petitioner, it was also around that period. According to learned counsel for the petitioner, petitioner is not connected with the recovery in any manner and he is ready and willing to join the investigation and cooperate therewith, as such he be granted an opportunity to do so by acceptance of the present petition.

Whereas, leaned State counsel while controverting the submissions made by learned counsel for the petitioner has contended that the recovery effected from the co-accused of the present petitioner to the tune of 230 kgs. of ganja comes within the definition of commercial quantity, attracting bar of Section 37 of NDPS Act and furthermore, the name of the petitioner in disclosure statement of co-accused is admissible

under Section 30 of the Evidence Act. He further states that from the mobile phone call details coupled with transfer of money by petitioner in bank account of co-accused Umakant @ Pujari goes to show the active involvement of petitioner in drug peddling, pointing out that the petitioner wanted to purchase the contraband and for that he had been in touch with Parmod telephonically and amount of Rs.60,000/- deposited by petitioner in bank account of Umakant alias Pujari was on account of purchase of contraband, as such petitioner does not deserve concession of anticipatory bail.

After hearing the rival contentions, I find that the present petition is doomed for failure. Learned Additional Sessions Judge/Judge, Special Court, Karnal while declining the request of petitioner for grant of pre-arrest bail has passed a detailed and well reasoned order. For ready reference, the relevant para of the order is being reproduced as under:

8. In the present case, the alleged recovery of 230 KG of Gaja was effected from the possession of the co-accused is commercial quantity. As per the contention of the learned Public Prosecutor there is a telephonic conversation between the co-accused Parmod and applicant/accused Ravi alias Chinky. The amount has been transferred by the applicant/accused Ravi alias Chinky in the bank account of co-accused Umakant alias Pujari, who is the main accused of this case. There are specific allegations against the applicant-accused that he along with co-accused persons were indulging in the business of purchasing and selling

Ganja. As per the case of prosecution, the applicant/accused has committed the offence under Section 27-A of the NDPS Act and the punishment for committing the offence under Section 27-A of NDPS Act is rigorous imprisonment for a term which shall not be less than ten years, but which may extend to twenty years and shall also be liable to fine which shall not be less than one lac rupees, but which may extend to two lacs rupees. The custodial interrogation of the applicant/accused is required in this case for proper and just investigation of this case. The offence committed by the applicant/accused is against the society and thus considering all the attending facts and circumstances of the case as well as gravity of the offence; as also the settled principle of law that power of grant of bail under Section 438 Cr.P.C. is to be sparingly exercised in extra ordinary circumstances and thus, there being no such circumstances having been made out in this case, this Court does not find it a proper case for granting the relief of anticipatory bail to the applicant-accused. Therefore, without commenting on the merits of the case, lest it may prejudice the case of either of the parties, the anticipatory bail application of applicant/accused Ravi alias Chinky is hereby dismissed. After due compliance, file be consigned to records.

Learned Additional Sessions Judge/Judge, Special Court,

Karnal has dealt with the submissions made by learned counsel for the petitioner. Nevertheless such submissions made before this Court also fail to convince me. The non-mentioning of name of the petitioner in the FIR does not given him any advantage by default.

The FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story.

It is erroneous to say that disclosure statement made by the accused during interrogation cannot be considered or looked into to connect the other co-accused. Such disclosure statement of co-accused can certainly be taken into consideration for providing lead in investigation and even during trial it is admissible under Section 30 of the Indian Evidence Act.

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.

Furthermore, the recovery involved in this case amounts to

commercial quantity and from the facts and circumstances of the case offence under Section 27-A of NDPS Act is disclosed attracting bar of Section 37 of NDPS Act.

Section 37 of the Act reads as under:

Offences to be cognizable and non-bailable.—(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, 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.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

There is no reason available to this Court to record satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit

any offence while on bail.

Though it is basically applicable to regular bails but it does finds application to pre-arrest bails since the scope of the latter is quite limited as compared to that of regular bail.

The petitioner is duly connected with the recovery on account of mobile call detail record, copy of which has been attached with the written reply by the State as Annexure R3 as well as bank record showing transfer of money by the petitioner in account of co-accused Umakant @ Pujari, copy of such record being Annexure R1.

Furthermore, the custodial interrogation of the petitioner/accused is required for complete and effective investigation to find out as to how the petitioner was funding the purchase of drugs and narcotics; from where the contraband used to be procured and where it was sold; where the drug money used to be invested 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 uncalled for.

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.

5.8.2021

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No