

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 18305 of 2021 (O&M)

Date of decision : 25.5.2021

Kulwant Singh

...

.....Petitioner

vs.

State of Haryana

.....Respondent

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

Present: Mr. R.S. Mamli, Advocate for the petitioner

Mr. Karan Garg, Assistant Advocate General,
Haryana.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

This petition for pre-arrest bail under Section 438 Cr.P.C., has been filed by petitioner – Kulwant Singh, aged about 32 years, s/o Inder Singh, resident of Dhani Sadwali, Ayalki, Tehsil and District Fatehabad, being accused in case FIR No. 88 dated 13.4.2021 for offences under Sections 21(b) and 27-A of the NDPS Act, registered at Police Station Sadar Ratia, District Fatehabad.

Briefly stated, facts of the case, as per prosecution story, are that, on 13.4.2021, one Sandeep @ Teji was apprehended by the police within the jurisdiction of Police Station City, Ratia and found him to be in possession of 6.10 grams of heroin. On being enquired he disclosed that he had procured the contraband from present petitioner – Kulwant Singh. In that way he was nominated as an accused.

Apprehending his arrest in this case, petitioner – Kulwant Singh, had filed an application for grant of pre-arrest bail before the

Court of Special Judge, under NDPS Act, Fatehabad, which was however, dismissed on 22.4.2021. Feeling aggrieved, the petitioner has approached this Court by way of filing the present petition, craving for grant of similar relief, 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.

Reply has been filed by the State, which is taken on record.

The pre-arrest bail is a discretionary equitable relief, which is not to be granted in routine, but in exceptional circumstances. This relief is to be granted to the persons who may be involved in false criminal cases on account of political or such like reasons, to save them from harassment and any inconvenience and it is not to act as a shield for the criminals to provide protective cover to them from arrest and interrogation by the police.

The custodial interrogation of the petitioner is required for complete and effective investigation, so as to find out about the other transactions with regard to supply of contraband by him to various persons, alone or in company of some other criminal. This is necessary to bust racket of drug peddling. In case the custodial interrogation of the petitioner is denied to the investigating agency, that would leave many lacuna, loopholes and gaps in the investigation, adversely affecting the same, which is not called for.

It may be mentioned here that the custodial interrogation of an accused is more elicitation oriented because a criminal having

protection of pre-arrest bail would certainly not come out with all the information within his knowledge, fully knowing that the police would not be able to take any action against him, even if he remains quiet.

The contention of learned counsel for the petitioner that the name of the petitioner has cropped up in the statement of co-accused Sandeep @ Teji, which is not admissible in evidence, is without any merit since 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.

The present FIR is at the stage of investigation and statement

of Sandeep @ Teji can certainly be taken into consideration for providing lead to the investigation.

Furthermore, the petitioner has been booked for offence under Section 27-A of the NDPS Act, also and Section 37 of the NDPS Act, 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, there is no question of pre-arrest bail being granted to such culprit, the scope of which is comparatively limited.

Thus no ground is there to grant the benefit of pre-arrest bail to the petitioner.

As such the petition lacks merit and is dismissed accordingly.

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

25.5.2021
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(**H.S. Madaan**)
Judge

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No