

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

CRM-M-20601-2021 (O&M)

Date of decision: 08.07.2021

Mahesh Kumar @ Mahesh Kalra

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

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

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition for pre-arrest bail has been filed by petitioner Mahesh Kumar @ Mahesh Kalra, an accused in FIR No.18 dated 08.03.2021, for offences under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered with Police Station Khanauri, District Sangrur.

Briefly stated the facts of the case as per prosecution story are that, on 08.03.2021, accused Sanjay Kumar was apprehended by the police from Police Station Khanauri, District Sangrur within its jurisdiction and he was found in possession of 2000 intoxicant tablets having nomenclature 'Clovidol', which amounts to commercial quantity; after registration of the FIR, the investigation was carried out;

on being interrogation, Sanjay Kumar disclosed that he along with Balihar Singh was indulging in drug paddling, sharing the profits; on 18.04.2021, Lakhwinder Singh co-accused suffered a statement that Sanjay Kumar had purchased the contraband from Mahesh Kumar, proprietor of Gagan Medical Hall, who happens to be the petitioner before this Court.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions at Sangrur, by moving an application for grant of pre-arrest bail. However, his such application was dismissed by Judge, Special Court, Sangrur, vide order dated 17.05.2021. As such, the petitioner has approached this Court, craving for grant of similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has argued that petitioner does not have any past criminal record; he has no connection with Gagan Medical Hall and there is no evidence to show that the recovered contraband had been supplied to Sanjay Kumar by the present petitioner. He has further contended that no action can be taken against the present petitioner on the basis of statement of co-accused, which is inadmissible in evidence in terms of Section 25 of the Indian Evidence Act (for short 'the Act'). Therefore, petitioner be granted pre-

arrest bail.

Learned State counsel has offered vehement opposition to the prayer for grant of anticipatory bail to the petitioner.

After hearing the rival contentions and going through the record, I find that no case for grant of pre-arrest bail to the petitioner is made out. Pre-arrest bail is a discretionary equitable relief, which is to be granted by the Court in rare and exceptional circumstances to save the innocent persons from harassment and inconvenience and not to provide protective umbrella to the criminals enabling them to avoid arrest and interrogation by the investigating agency.

As far as argument of learned counsel for the petitioner that the petitioner is not named in the FIR and his name cropped up in the statement of co-accused, which is inadmissible in evidence, the said argument lacks merit. Section 30 of the 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. Such type of statement can certainly be taken into consideration for the purpose of providing lead in the investigation and the petitioner cannot derive any benefit from the fact that his name is not there in the FIR and he has been named in the statement of co-accused only.

As regards the other contentions that no recovery has been

effected from the petitioner, that also does not help the petitioner much. The petitioner might have been careful and cautious enough not to be caught with the contraband himself and he was a supplier, getting his contraband supplied to the customers through carriers, who agree to do so for a small reward/consideration. It has to be taken note of that as to why the petitioner be named wrongly by his co-accused in the absence of any specific reason. During the course of investigation, it has come out that Gagan Medical Hall is being run by the petitioner and it was he, who had supplied the recovered contraband to Sanjay Kumar, thus, the investigation to that extent cannot be discarded outrightly. It needs to be mention here that a practise is there in the region, where person holding license to run chemist shops, give it to some other person for doing that work for consideration and merely because a medical store/chemist shop is being run on strength of license in the name of some other person, does not absolve the person actually running that drug store/chemist store of his liability.

Furthermore, since the recovered contraband in this case comes within the definition of commercial quantity, bar of Section 37 of NDPS Act is also applicable. The custodial interrogation of the petitioner is definitely required to find out the necessary details with regard to source of procurement of contraband, the persons to whom he had been supplying the same, the money earned therefrom and the investment of that money etc. In case, the same is denied to the investigating agency that shall leave many loopholes, lacuna and gaps

in the investigation, adversely affecting the case of prosecution, which is uncalled for.

Therefore, no case for grant of pre-arrest bail to the petitioner is made out. The petition is doomed for failure and is dismissed accordingly.

08.07.2021
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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No