

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

101

CRM-M-21391-2021.

Date of Decision: 12.07.2021.

Makhan Singh

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Atul Lakhanpal, Senior Advocate, with
Mr. Arjun Lakhanpal, Advocate for petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This petition under Section 438 Cr.P.C. has been moved by petitioner for grant of pre-arrest bail in case FIR No.132 dated 14.05.2021 under Section 51(b) of Disaster Management Act, 2005, Section 188 IPC and Section 15 of NDPS Act, registered at Police Station Sadar, Fatehabad, District Fatehabad.

Learned senior counsel for the petitioner *inter alia* contends that allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly on 14.05.2021 contraband (Poppy Straw) weighing 101 Kgs. (commercial quantity) was recovered from co-accused namely Yakub and Angrej Singh

livelihood by running a Dhaba/Tea Stall just opposite to Tehsil Office, Ratia, besides being an agriculturist. He further submits that earlier petitioner had employed his nephew (sister's son) co-accused Angrej Singh @ Geja at his Dhaba but as latter had made some bungling in the accounts and then after admonition, he was shunted out of service on 10.05.2021. He further urges that since Angrej Singh @ Geja was nourishing grudge against the petitioner, he has falsely implicated the petitioner in the commission of alleged offence. He further urges that petitioner is neither owner of vehicle make Pick-Up bearing registration No.HR-57A-9987 nor having any nexus with the alleged contraband. He further submits that nothing incriminating is to be recovered at the instance of petitioner. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that in the instant case FIR, co-accused namely Yakub and Angrej Singh @ Geja were apprehended alongwith contraband (Poppy Straw) weighing 101 Kgs. and immediately thereafter, they suffered disclosure statements (Annexures R/1 and R/2), disclosing that above said contraband was purchased by petitioner from Parkash @ Beeray of Bhilwara and part sale consideration of Rs.1 Lakh was paid by them to said Parkash @ Beeray at the instance of petitioner and on their way back to the place of petitioner, they were apprehended, which chain of events depicts direct nexus between petitioner and co-accused

commission of offence. He further submits that prior to recovery of contraband from co-accused namely Yakub and Angrej Singh @ Geja in the evening hours on 14.05.2021, co-accused Angrej Singh @ Geja was in constant contact with the petitioner through mobile phone, as is evident from call details (Annexure R/4) pertaining to their mobile phones. He further submits that co-accused Parkash @ Beeray, from whom contraband was purchased, said Parkash @ Beeray, vide his disclosure statement (Annexure R/3) has disclosed that contraband was purchased from him by the petitioner for a sum of Rs.3 Lakhs and for that purpose co-accused namely Yakub and Angrej Singh @ Geja were deputed by the petitioner to bring the contraband and part sale consideration of Rs.1 Lakh was paid to him, whereas balance sale consideration was to be deposited in his account by the petitioner. He further submits that antecedents of petitioner are not upto the mark as previously he was involved in case FIR No.369 dated 16.09.2012 under Section 15 of NDPS Act, registered at Police Station Ratia, District Fatehabad and in that case FIR, he was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay fine of Rs.1 Lakh, vide judgment of conviction dated 08.05.2014 and order on quantum of sentence dated 09.05.2014 and the appeal thereof is pending adjudication before this Court. He further urges that custodial interrogation of petitioner is necessitated as he being propounder of transaction of huge contraband, genesis of commission of offence is to be unearthed and further mobile phone used by him to contact co-accused during the commission of offence, is to be recovered. He further urges that in view of nature of offence committed by the petitioner, he is not entitled

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as reply furnished at the instance of respondent-State.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly contraband (Poppy Straw) weighing 101 Kgs., which was recovered from co-accused namely Yakub and Angrej Singh @ Geja, was purchased by the petitioner from co-accused Parkash @ Beeray. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out

in favour of petitioner for his entitlement of pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

12.07.2021
jitender

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No