

CRM-M-27847-2021 (O&M)

Through video conference

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

**CRM-M-27847-2021 (O&M).
Decided on: October 26, 2021.**

Abhilash

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.G.S.Sawhney, Advocate,
for the petitioner.**

Mr.Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, for the grant of anticipatory bail in FIR No.71 dated 5.2.2021, under Section 20 of the Narcotics Drugs and Psychotropic Substances Act, 1985, registered at Police Station Azad Nagar, Hisar.

Notice of motion was issued in the present case on 19.7.2021 and the State had also filed reply by way of affidavit in the

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present case. Thereafter, vide order dated 6.8.2021, this Court had granted interim bail to the petitioner subject to his joining investigation and abiding by the conditions as provided under Section 438 (2) Cr.P.C.

It is the case of the petitioner that name of the petitioner was nominated purely on the basis of disclosure statement of the other co-accused namely Sanjay who had also named some other person including one Karambir son of Om Parkash but the said Karambir was arrested and he has been granted regular bail by this Court. It is further the case of the petitioner that except for the disclosure statement of the co-accused, there is no other sufficient material available with the police to connect the petitioner with the present offence. Furthermore, the disclosure statement is not admissible in evidence in view of the judgment of the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1**. In the affidavit filed by the State, it has been stated that the name of the petitioner has been nominated on the basis of disclosure statement made by other co-accused Sanjay, who disclosed that the present petitioner was the supplier. Apart from the disclosure statement there is nothing on the record at this stage to show as to how the petitioner was connected with the alleged crime. The stand taken by the State in the affidavit is that since the petitioner keeps on changing his place of residence the same could not be ascertained and furthermore, as per the learned State counsel even the FSL laboratory report has not been received till date. The alleged recovery from the co-accused in the present case is 27 kgs. 400 grams of ganja which is little above the commercial quantity of 20 kgs. under the NDPS Act.

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Mr.Naveen Singh Panwar, learned DAG, Haryana, on instructions from ASI Yogender Singh, has stated that in pursuance of the order passed by this Court on 6.8.2021 whereby the petitioner was granted interim bail, the petitioner has joined investigation and has fully cooperated with the investigation process and is not required for custodial investigation. So far as the alleged recovery from the co-accused of the petitioner is concerned, the same is of commercial quantity and therefore, the bar contained under Section 37 of the NDPS Act is also required to be considered, at this stage. The only connection of the petitioner with the crime as shown by the State in its affidavit and in the arguments raised by the learned State counsel was that the co-accused who was arrested on the spot had made a disclosure statement but there is nothing on the record to show as to how the petitioner is connected with the present offence. The disclosure statement is per se not admissible in evidence. Therefore, at this stage, there is prima facie reason to believe that the petitioner is not guilty of the offence. Furthermore, there is nothing on the record or in the arguments raised by the learned State counsel to show that the petitioner is likely to repeat the offence. Therefore, at this stage, a departure can be made from the bar contained under Section 37 of the NDPS Act. Furthermore, it is the case of the state that the petitioner is not required for custodial investigation.

In view of above, the present petition is allowed. Interim order dated 6.8.2021 is hereby made absolute.

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However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

Learned counsel for the petitioner has pointed out that in the order dated 6.8.2021 in para 3 on the first page, it has been inadvertently mentioned that on 19.7.2019 the notice was issued which is a typographical mistake whereas in fact, notice of motion was issued on 19.7.2021.

In view of above, it is directed that since it is a typographical mistake, in para 3 of the first page of order dated 6.8.2021, the date mentioned as 19.7.2019 be read as 19.7.2021.

October 26, 2021.	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No