

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

209

CRM-M-23517-2020

Date of decision: 02.08.2021

Ashok Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Chanderhas Yadav, Advocate
for the petitioner.

Mr. Manish Dadwal, Asstt. A.G. Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No. 69 dated 18.03.2020 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Nathu Sarai Chopta, District Sirsa.

Vide order dated 21.08.2020 the Co-ordinate Bench of this Court had, while issuing notice of motion, granted interim anticipatory bail to the petitioner with direction to join the investigation and relevant part of the above said order reads as under:

“Inter alia submits that the petitioner is a young student and has been falsely implicated. He has been involved in this case only on the disclosure statement of the co-accused. There is no other criminal case pending against the petitioner.

Notice of motion.

Mr. Munish Sharma, learned AAG, Haryana, accepts notice and waives service.

Adjourned to 24.11.2020.

In the meantime, the petitioner is directed to join investigation with the Investigating Officer on 08.09.2020 at 10:00 A.M. and cooperate therewith. In the event of his arrest, he shall be released on interim bail to the satisfaction of the Investigating Officer/SHO concerned subject to his compliance of the conditions enshrined under Section 438(2) Cr.P.C.”

The petition has been opposed by the learned State Counsel in terms of reply filed by way of affidavit of Dharamvir, Deputy Superintendent of Police, Sirsa in the Registry of this Court which is taken on record.

I have heard learned Counsel for the petitioner and learned State Counsel and have gone through the record.

Learned Counsel for the petitioner has submitted that the petitioner was not apprehended on the spot and no recovery was made from him. The petitioner had no concern with co-accused-Gobind and was not involved in commission of the alleged offence and he has been falsely implicated in the case on the basis of alleged disclosure statement of co-accused-Gobind. There is no other material against the petitioner except the disclosure statement of co-accused which would not be of any substantive evidentiary value. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37(1)(b) of the NDPS Act are not applicable qua the petitioner. In compliance with order dated 21.08.2020 passed by the Co-ordinate Bench, the petitioner joined the investigation and his custodial interrogation is not required in the case.

Therefore he may be granted anticipatory bail.

Learned State Counsel has vehemently opposed the petition and submitted that in view of gravity of accusation, the petitioner does not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

However, learned State Counsel has acknowledged that in compliance with order dated 21.08.2020 passed by this Court, the petitioner has joined the investigation and that his custodial interrogation is not required in the case.

In view of the facts and circumstances of the case, nature of accusation against the petitioner, who has been implicated in the case on the basis of disclosure statement of co-accused, the fact that he is not involved in any other case under the NDPS Act, inapplicability or satisfaction by due implication of rigors of Section 37(1) (b) of the NDPS Act and also the fact that there is no material to justify the apprehension of the petitioner fleeing from justice or tampering with evidence or criminally intimidating the prosecution witnesses, but without expressing any opinion on the merits of the case, I am of the considered view that the petitioner deserves grant of anticipatory bail.

Accordingly, the petition is allowed and order dated 21.08.2020 granting interim bail to the petitioner is made absolute. However, the petitioner shall join the investigation again if and as and when called upon to do so and shall comply with the conditions enumerated under Section 438(2) (i) to (iii) of the Cr.P.C. In view of Section 438(2)(iv) read with Section 437(3)(b) of the Cr.P.C. anticipatory bail granted to the petitioner shall also be subject to the condition that he shall not commit any similar offence under the NDPS

Act after his release on anticipatory bail. In case of non-compliance of the above-said conditions, the petitioner shall not be entitled to the protection of anticipatory bail allowed to him.

02.08.2021

Vishal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No