

CRM-M-28555-2021

Date of Decision : 24.08.2021

BIRBAL

...Petitioner

versus

STATE OF HARYANA

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Amit Choudhary, Advocate for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.

2. Prayer in the petition under Section 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No. 318 dated 12.07.2021, registered under Sections 21 (b)/27-A/61/85 of NDPS Act, 1985 at Police Station City Fatehabad, District Fatehabad.

3. On 23.07.2021, the following order was passed:-

“Case is being taken up for hearing through VideoConferencing due to Covid-19 pandemic.

Prayer in the petition under Section 438 Cr.P.C. is for grant of pre-arrest bail to the petitioner in case FIR No.318, dated 12.07.2021 registered under Section 21 (b)/27-A/61/85, NDPS Act, 1985 at Police Station City Fatehabad, District Fatehabad.

Learned counsel contends that the petitioner has been implicated in the instant case, solely on the basis of disclosure statement made by co-accused Sahil Kumar and Jatin @ Jecky from whom on their arrest on 12.07.2021, 37.60 grams of heroin was recovered and

they made a disclosure statement of having purchased the same from the petitioner and that apart from the aforementioned disclosure statement, there is no material to connect the petitioner with the commission of the offence, besides he does not have any other case registered against him under the NDPS Act, and is ready and willing to join investigation and fully co-operate in the same.

Learned counsel relies upon the decision of Hon'ble the Supreme Court in 'Hari CharanKurmi versus State of Bihar', 1964 AIR (SC) 1184 to contend that disclosure/confession by a co-accused cannot be used against the petitioner in the absence of there being any other material to connect the petitioner with the commission of the offence.

Notice of motion.

Mr. Sandeep Singh Mann, learned Addl. AG, Haryana, accepts notice and on instructions from SI Rameshwar Lal, confirms that the petitioner has been implicated in the instant case solely on the basis of disclosure statement made by the co-accused. He however requests for time to file reply.

Adjourned to 24.08.2021.

In the meantime, the petitioner is directed to join investigation and fully cooperate in the same. However, in the event of arrest, the petitioner be released on ad-interim pre-arrest bail, subject to his furnishing bail/surety bonds to the satisfaction of the Arresting / Investigating Officer. The petitioner shall abide by the conditions envisaged under Section 438(2) Cr.P.C., failing which, the interim protection granted to the petitioner, shall stand vacated."

4. Today, learned counsel for the petitioner contends while learned State counsel on instructions from *SI Rameshwar Dayal* confirms that pursuant to the order of this Court dated 23.07.2021, the petitioner joined investigation, fully cooperated with the police, was released on ad interim pre arrest bail and that his custodial interrogation is not required.
5. In view of the statement of learned State counsel, order dated 23.07.2021, passed by this Court, is made absolute. The petitioner shall abide with the conditions enumerated in Section 438(2) Cr.P.C. However, nothing stated hereinabove shall be read as an expression of opinion on the merits of the case.
6. Petition stands *disposed of* in the aforementioned terms.

(B.S. Walia)
Judge

24.08.2021
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<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>