

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

CRM-M No.33238 of 2021

Date of Decision: November 11, 2021

Sanjay Kumar

...Petitioner

Versus

The State of Haryana

...Respondent

CRM-M No.45594 of 2021

Date of Decision: November 11, 2021

Virender Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Arvind Bansal, Advocate for the petitioner
in CRM-M No.33238 of 2021.

Mr. Vansh Malhotra, Advocate for the petitioner
in CRM-M No.45594 of 2021.

Mr. Munish Sharma, AAG, Haryana.

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

On 17.08.2021, the following order was passed by this Court in

CRM-M No.33238 of 2021:-

“Case heard via video conference.

By this petition, the petitioner seeks the concession of 'anticipatory

bail' under the provisions of Section 438 Cr.P.C., upon FIR No.296, dated 05.06.2021, having been registered at Police Station City, Kaithal, alleging therein the commission of offences punishable under the provisions of Sections 20(b)(ii)(c), 25, 27-A and 29 of the NDPS Act, 1985.

Learned counsel for the petitioner submits that though it is alleged that there was a secret information with regard to the petitioner and his co-accused Sikander being involved in the purchase and sale of contraband, the entire story is cooked up, with the petitioner not apprehended at the spot and the main plank of the investigating agencies' case being an alleged disclosure statement made in police custody by such co-accused.

Though, as already noticed, other than the disclosure statement even secret information is alleged to have been received prior thereto; yet, notice of motion is issued.

Mr. Neeraj Poswal, AAG, Haryana, accepts notice at the asking of the court on behalf of the respondent State.

Learned State counsel submits that other than the fact that the petitioners' name was very much given in the secret information received there is another criminal case under the provisions of the NDPS Act, 1985, registered against him as also three criminal cases under the provisions of the IPC so registered.

Mr. Bansal counters by stating that, firstly, the petitioner was acquitted in all the cases under the provisions of the IPC and as regards the other case registered against him under the Act of 1985, he has been admitted to bail.

Without making any comment on the actual merits of the case, considering that an alleged secret information and an alleged disclosure statement do cast a doubt at least at this stage in the mind of this court, the petitioner is directed to join investigation within one week and if, upon him so joining, he is sought to be arrested, he shall be released on interim bail, upon his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Duty Magistrate, till the next date of hearing.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join the petitioner in investigation, in terms of the order of this Court.

Adjourned to 27.09.2021.”

Thereafter CRM-M No.45594 of 2021 was filed by a co-accused of the petitioner in CRM-M No.33238 of 2021, seeking to be admitted to bail under the provisions of Section 439 of the Cr.P.C., he already having been arrested on a disclosure statement alleged to have been made in the police custody by the person (Sikander @ Bodi) stated to have been arrested at the spot with 21 Kg and 300 grms of *ganja phul patti*.

A common reply has been filed to both petitions by way an affidavit of the DSP, AEC, Kaithal, which is ordered to be taken on record.

Learned State counsel points to what is contained in this affidavit, to submit that as regards petitioner Sanjay Kumar, he is the one who was actually accompanying Sikander @ Bodi at the time when that person was arrested but with Sanjay Kumar having run away from the spot, even as per the disclosure statement of Sikander @ Bodi.

Petitioner Virender Singh is alleged to have supplied the said contraband to Sanjay Kumar and Sikander @ Bodi and consequently was arraigned as an accused in the FIR.

Having considered the matter, neither of the petitioners having been arrested at the spot, in my opinion simply on the basis of a disclosure statement allegedly made in the police custody, as to the identity of the other

person alleged to have been present at the spot where Sikander @ Bodi was arrested, and Virender Singh also having been named only in such disclosure statement, even the bar contained in Section 37 of the NDPS Act, 1985, would not stand in the way of the petitioner being admitted to bail, with this court therefore exercising its jurisdiction under sub clause (ii), clause (b) of sub section (1) of the said provisions. Consequently, as regards the petitioner in CRM-M No.33238 of 2021 i.e. Sanjay Kumar, the petition is allowed, with the order dated 17.08.2021, made absolute on the same terms and conditions.

As regards the petitioner in CRM-M No.45594 of 2021, the same is allowed, with the petitioner, i.e. Virender Singh, ordered to be admitted to bail to the satisfaction of the trial Court/CJM/Duty Magistrate concerned.

It is made absolutely clear that nothing observed by this Court in the context of either of these petitions shall be taken to be an absolute observation on the merits of either case, with the trial to proceed only on the basis of evidence led before the trial court, as regards the complicity of the petitioners in the commission of the offence in question, or otherwise.

A photocopy of this order be placed on the file of the other connected case too.

November 11, 2021

sarita

(AMOL RATTAN SINGH)**JUDGE****Whether reasoned/speaking: Yes****Whether reportable: No**