

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM-M-33035-2021 (O&M).
Decided on: October 5, 2021.

Lokender

.. Petitioner

VERSUS

State of Haryana

.. Respondent

* * *

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

* * *

**PRESENT Mr.Yashveer Kharb, Advocate,
for the petitioner.**

Mr.Ranvir Singh Arya, Addl. A.G. Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in FIR No.450 dated 17.7.2021, under Section 20 of NDPS Act, 1985, registered at Police Station Samalkha, District Panipat.

FIR in the present case was lodged on the basis of an information given to the police by one informer that Narendra son of Dharam Singh and Upendra son of Hoshiar Singh, resident of Deenanath Colony, Noorwala, Panipat, in Santro car of white colour bearing registration No.UK-

07-BB-8042, are coming from Delhi side and will be going to Panipat with psychotropic substance in abundant quantity and if immediately barricading is set up at G.T. Road Village Bhodwal, Majri Mod, Narendra and Upendra in the aforementioned car with psychotropic substance can be captured. Thereafter, further proceedings were adopted by making an entry in the General Diary and after reaching at G.T. Road Bhodwal Majro Mod and informing other officials, a barricade was set up and after some time a car was seen to be approaching from Delhi side which was made to stop with the light of torch and with the assistance of the officials, the youngsters sitting on the driving seat and the passenger seat were asked about their name and addresses to which the youngster sitting in the driver seat told his name to be Narendra son of Dharm Singh while the person sitting in the passenger seat told his name to be Upendra son of Hoshiar Singh and thereafter, the proceedings under Section 50 of the NDPS Act were adopted and there was a total recovery of 55 Kg. 590 grams of *ganja*.

Learned counsel for the petitioner has submitted that the name of the petitioner do not figure in the FIR and it was only on the basis of disclosure statement of the co-accused namely Narendra that name of petitioner has been nominated in the present case. He has submitted that so far as the petitioner is concerned, he had purchased the car from which the contraband was allegedly confiscated from one Riyaz Rana on the basis of receipt Annexure P-3 on 31.3.2021 and thereafter, he again sold the car to one Narender son of Dharam Singh vide Annexure P-4 who is one of the co-accused. He has submitted that the petitioner is not involved in any other case and therefore, he may be considered for the grant of anticipatory bail.

Mr. Ranvir Singh Arya, learned Addl. A.G. Haryana has submitted that a detailed status report has been filed by the Assistant Superintendent of Police, Samalkha, District Panipat and while referring to the status report, learned State counsel has submitted that the petitioner is actively involved in the present crime because co-accused Narender arrested at the spot by the police with 55 kgs. And 590 grams of *ganja* was the driver of the petitioner. He has submitted that it is the case of the petitioner himself that vide Annexure P-3, he had purchased the car from one Riyaz Rana although it was only by way of a receipt and thereafter, in case the petitioner has sold the said vehicle to Narender son of Dharam Singh vide Annexure P-4, then the same was not by way of any legal document or transferred in accordance with law and Annexure P-4 reflects only one receipt which cannot be termed as transfer of the vehicle. Further, it is the case of the petitioner himself that he has purchased the vehicle from one Riyaz Rana on 31.3.2021 and the occurrence is dated 17.7.2021 and therefore, the contraband was seized from the car which petitioner himself has stated that he has purchased the same from Riyaz Rana. He has further submitted that although the name of the petitioner has come on the basis of disclosure statement of co-accused Narender but the fact that the car belongs to the petitioner is also an important factor to link the petitioner with the present offence. He has submitted that the recovery of 55 kg. 590 grams of *ganja* is commercial quantity and therefore, the petition filed by the petitioner for the grant of anticipatory bail is hit by the bar under Section 37 of the NDPS Act and therefore, he has prayed for dismissal of the present application.

I have heard the learned counsel for the parties.

Petitioner himself has attached Annexure P-3 which is a receipt and as per the learned counsel for the petitioner, he had purchased the car from one Riyaz Rana on 31.3.2021 and is further the case of the petitioner that he had sold the said vehicle to Narender son of Dharam Singh vide Annexure P-4 on 1.7.2021 and the FIR in the present case came to be registered on 17.7.2021 when the alleged contraband was seized. Both, Annexures P-3 and P-4 are only the receipts which do not reflect any valid transfer of the vehicle but factual position as per counsel for petitioner is that vide Annexure P-3, petitioner himself is stated to have purchased the car from one Riyazs Rana and from the said car alleged contraband was seized and this is an important factor which cannot be ignored. It can also be a disputed question of fact as to whether the petitioner had actually transferred the vehicle to Narender son of Dharam Singh vide Annexure P-4 or not. A perusal of the Annexure P-4 shows that it is not a valid transfer and it is only a document in the nature of a receipt and therefore, the argument raised by the learned counsel for the petitioner that petitioner has been nominated on the basis of disclosure statement and he may be considered for the grant of anticipatory bail would not be sustainable. The alleged recovery is of commercial quantity and it is hit by the bar under Section 37 of the NDPS Act. A departure can always be made under Section 37 of the NDPS Act subject to the conditions that the ingredients contained in the aforesaid Section are fulfilled i.e. when the Court is satisfied that there is more than prima facie reason to believe that the petitioner is not guilty. However, in the present case, this Court is not satisfied that in the facts and circumstances of the present case, the petitioner is not guilty of the offence and therefore, no

departure can be made in the present case from the bar contained under Section 37 of the NDPS Act.

Therefore, considering the totality of the circumstances of the present case, the present petition is hereby dismissed.

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.

October 5, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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