

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

CRM-M-41809-2021

Date of Decision: 30.11.2021

Vikash

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajat Mor, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

AMOL RATTAN SINGH, J. (Oral)

On 05.10.2021, the following order had been passed by this
court:-

“Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.227, dated 12.07.2021, having been registered at Police Station Badli, District Jhajjar, alleging therein the commission of an offence punishable under Section 17 of the NDPS Act, 1985.

Learned counsel for the petitioner relies upon an order of this court dated September 30, 2021, passed in the case of one Sanjay, upon him having filed CRM-M-40937 of 2021.

The said order is reproduced hereinbelow:-

“Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.227, dated 12.07.2021, having been registered at Police Station Badli, Bahadurgarh, District Jhajjar, alleging therein the commission of an offence punishable under Section 17 of the NDPS Act, 1985.

Learned counsel for the petitioner submits that the petitioner was neither named in the secret information allegedly received on the basis of which the investigating agency apprehended one Arun with 10 grams of smack recovered from him (as alleged), with the petitioner only having been implicated on the basis of an alleged disclosure statement made in police custody by that person.

He next points to paragraph 8 of the order passed by the Addl. Sessions Judge, Gurugram, dated 24.09.2021, in which, after observing that 5 grams of smack/heroin is small

quantity, with commercial quantity being above 250 grams, it has next been stated that the co-accused of the petitioner, "Arun was allegedly found in possession of 10 grams of smack/heroin. Thus, the same being, commercial in nature".

Notice of motion be issued to the respondent, with Mr. Neeraj Poswal, learned AAG, Haryana, accepting notice on behalf of the respondent State, on the asking of the court.

As regards the quantity of heroin alleged to have been recovered from the co-accused of the petitioner (as per the case of the investigating agency), it is not denied to be 10 grams, with it also admitted that commercial quantity is above 250 grams.

In view of the above, it is not understood as to how, despite having noticed that the quantity recovered was 10 grams, it has been declared to be commercial quantity by the Addl. Sessions Judge.

Thus, keeping in view the fact that it is not commercial quantity as is alleged to have been recovered from the co-accused of the petitioner, and he has been named only on a disclosure statement made in police custody, with there being no other criminal case registered against him even as per the learned State counsel, and even though, without such disclosure, as to how his name would be even known to the investigating agency would be a question mark before this court, yet since prima facie at least Section 37 of the NDPS Act would not seem to be attracted, as it was only non-commercial quantity and with only an offence punishable under the provisions of Section 17 of the Act of 1985 having been made so far, as regards the allegation in the FIR, the petitioner is directed to join investigation within one week and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaq Magistrate. He shall abide by the 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 Illaq Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

Adjourned to 16.11.2021."

In the order passed by the Addl. Sessions Judge, Jhajjar, dated 28.09.2021, in the context of the present petitioner, it has been stated as follows:-

"8. As per the Table prepared, in terms of Section 2 (xxiii a) and Section 2 (vii a) of the Act, 1985, 5 grams of smack/heroin (diacetylmorphine) is small quantity and greater than 250 grams is commercial quantity (entry no.56). The co-accused, namely Arun was allegedly found in possession of 10 grams of smack/heroin. Thus, the same being commercial in nature. However, as per the FIR, the applicant named above had allegedly sold, to the above said Arun, the contraband. The allegations however, have been denied by the applicant."

Consequently, the petitioner having been named only on a disclosure statement allegedly made in police custody and even the quantity of the contraband stated to have been recovered from the person who was actually apprehended with the same (as per the case of the investigating agency) being well below commercial quantity, let notice of motion be issued, with Mr. Neeraj Poswal, learned AAG, Haryana, accepting notice on behalf of the respondent State, on the asking of the court.

On query, learned State counsel (on instructions) has not denied the fact that the contraband recovered is well below the commercial quantity.

In view of the above, the petitioner is directed to join investigation within one week and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaqa Magistrate. He shall abide by the 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 Illaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

Adjourned to 30.11.2021.

A copy of this order be sent to the learned Sessions Judge, Jhajjar.

[It is to be noticed here that in the order dated 30.09.2021 passed by this court in CRM-M-40937 of 2021, it has been erroneously stated that the order referred to (dated 24.09.2021) in that case, was passed by the Addl. Sessions Judge, Gurugram, whereas it was actually passed by the Addl. Sessions Judge, Jhajjar, as has been pointed out by both learned counsel.]”

Today, learned State counsel submits, on instructions from ASI Ashok Kumar, that the petitioner having joined investigation his custodial interrogation is not required.

That being so, without making any comment on the actual merits of the case, the petition is allowed, with the aforesaid order dated 05.10.2021, made absolute on the same terms and conditions.

November 30, 2021

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

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