

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47973-2021

Date of Decision: 23.11.2021

Ramesh

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Shokeen Singh Verma, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.201 dated 02.08.2021, under Section 20/21 of NDPS Act, 1985, registered at Police Station Sadar Dadri, District Charkhi Dadri.

As per the FIR which was lodged on the basis of secret information there was sale of illicit liquor and narcotic drugs and, therefore, the police party reached Anil Medical Hall which was found locked and on asking, they came to know that the plot belongs to one ex-sarpanch Dilbagh where liquor shop is opened and this liquor shop was taken on rent by Anil, Sanjay and Ramesh (petitioner) and they were running liquor business. The abovesaid three persons including the petitioner kept the narcotic drugs in godown/warehouse behind the liquor shop and use to sell it in the medical store and on the basis of the aforesaid secret information, the officials reached the village of ex-sarpanch of village Chhapar. In the liquor shop

which was opened in the godown/warehouse of tin shed at the back side, the warehouse was found to be locked and the secret informer told that the narcotic drugs were kept in this warehouse. As the warehouse was locked, they wrote a separate application to get permission to search the warehouse and sent it to DSP, Charkhi Dadri through Constable and was informed about the arrival of a Drug Control Officer on the spot and the police got the written permission from DSP, Charkhi Dadri. In the meanwhile, Mr. Hemant Grover, DCO Charkhi Dadri reached on the spot, to whom the information was conveyed. An attempt was made to join the witnesses who came on the spot but all of them left the spot expressing their helplessness. However, the person who was present in liquor shop namely Lella Ram son of Chand Singh who is the salesman of the liquor shop told that the liquor shop and warehouse were taken on rent by Anil, Sanjay and Ramesh (petitioner) and when they asked about the whereabouts of the keys of the warehouse, Lella Ram talked to Ramesh (petitioner) on phone and took out the key from under the brick kept behind the liquor shop and gave it to the ASI and thereafter, the warehouse was checked by opening the lock and on search 3 paper boxes were found, out of which 2 were closed and 1 was opened and 1 box was checked and it had plastic bottles of Umerex Cough Syrup inside. In the sealed boxes 120 bottles each and in opened box 10 bottles of Umerex Cough Syrup were found and total 250 plastic bottles containing 100 ml each Umerex Cough Syrup were found. Hemant Grover, DCO told this medicine is banned and prepared a separate parcel for report. Thereafter another box containing 4 small packets of Combipack of Mifepuistone Misoprostal tablets rest kit used for the termination of pregnancy were also found and thereafter 2 polythene bags were also recovered labelling 'Sri

Ganesh Fashion Hub' and on the same the mobile numbers of Ramesh (petitioner), Anil and Sanjay were written and on opening the same, intoxicant ganja was found in both the polythene bags and which weighed a total of 3.760 Kgs. Thereafter complete search of warehouse was carried out.

The learned counsel for the petitioner has submitted that in the present case the petitioner belongs to some other village and he is not associated with the present offence and it was only on the basis of hearsay evidence that his name has been nominated and he has got nothing to do with the present offence, if any. He further submitted that since the confiscated quantity was not found from the conscious possession of the petitioner, he may be considered for the grant of anticipatory bail.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted that a detailed affidavit has been filed by the Deputy Superintendent of Police, Headquarter, Charkhi Dadri on behalf of State of Haryana and while referring to the aforesaid affidavit the learned Deputy Advocate General submitted that firstly, the present petition is not maintainable in view of the fact that the petitioner had earlier approached this Court by filing a petition for anticipatory bail and vide Annexure P-5 and the petitioner himself had withdrawn the petition for anticipatory bail on 07.10.2021 and now merely one month has elapsed that the petitioner has again filed the present petition for anticipatory bail on 10.11.2021 without there being any change of circumstance and, therefore, the present petition is liable to be dismissed for not being maintainable. On merits, he submitted that the name of the petitioner has surfaced on the basis of secret information and direct role has been attributed to the petitioner in

the FIR itself. He submitted that so far as the raid conducted whereby some liquor bottles were found and a separate FIR was registered under the Excise Act, although he has been granted anticipatory bail but that would not have any effect on the merits of the present case. He further submitted that on the same spot some kits for medical termination of pregnancy were also recovered and the concerned Chief Medical Officer was called and an FIR was registered. He submitted that so far as the present case is concerned, proper procedure has been followed including calling of the gazetted officer on the spot and in his presence 250 bottles of Umerex Cough Syrup containing 100 ml each were found which is commercial in nature and it contained Codeine and Morphine. He submitted that the recovery of the aforesaid contraband is commercial quantity and, therefore, the present petition is also hit by the bar contained under Section 37 of the NDPS Act. He submitted that there is no ground to presume that the petitioner is not guilty because the facts and circumstances of the case which have been stated in the affidavit filed by the State suggest on the face of it that the petitioner was involved in the present offence. He submitted that apart from the aforesaid Umerex even 3.760 Kgs. of ganja was recovered and on the packet the mobile number of the petitioner was printed/mentioned. He further submitted that consumption of such substances will ultimately affect the younger generation and trading and purchase of Ganja is also dangerous to humanity and has ruined the lives of many people. Apart from the same the bottles of Umerex are also used for intoxication purposes. He further referred to para No.7 of the affidavit filed by the State and submitted that the petitioner is also involved in six more cases, although in one case he has been acquitted but the other five cases are pending, although under different

provisions of different legislations but not under the NDPS Act. He further submitted that in the present case for the purpose of elicitation of truth the custodial interrogation of the petitioner is required so as to uncover the entire modus operandi adopted by the petitioner and the other two co-accused and has therefore vehemently opposed the grant of anticipatory bail to the petitioner.

I have heard the learned counsel for the parties.

The petitioner had earlier also filed anticipatory bail application which was dismissed as withdrawn on 07.10.2021 vide Annexure P-5. The petitioner has not been able to show any ground to suggest that there has been any change of circumstance. The only argument raised during the course of arguments by the learned counsel for the petitioner with regard to the same is that in the Excise Act and under the Medical Termination of Pregnancy Act, 1971 he has been granted anticipatory bail would not carry any weight in view of the fact that in the present case the petitioner is involved under the NDPS Act and the recovery was of a commercial quantity and, therefore, the present petition would be hit by Section 37 of the NDPS Act. There is nothing on the record to show or in the submissions made by the learned counsel for the petitioner that any departure can be made from the bar contained under Section 37 of the Act. The alleged recovery was made from a godown/warehouse after calling the gazetted officer on the spot and the recovery is commercial quantity. The argument raised by the learned State counsel that the petitioner is also involved in number of other cases although not under the NDPS Act and his mobile number was printed on the contraband of Ganja seized and some other persons had also stated during the course of investigation that he was

involved in the present sale would thus carry weight for the purpose of considering the grant of anticipatory bail to the petitioner. The further argument raised by the learned State counsel that in this case in view of the facts and circumstances the custodial interrogation of the petitioner would be required for elicitation of truth and as to at what places he had sold the contraband in the past also would also carry weight and would therefore disentitle the petitioner for the grant of anticipatory bail.

Therefore, without expressing anything on the merits of the case, this Court deems it fit and proper not to grant the concession of anticipatory bail to the petitioner.

Consequently, 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 for the purpose of deciding the present petition only.

23.11.2021

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)**JUDGE**

: Yes/No
: Yes/No