IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Miscellaneous No.M-1138 of 2022
Date of Decision: *March 14th, 2022*

Aslam

..... PETITIONER(S)

VERSUS

State of Haryana

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE SANT PARKASH**

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PRESENT: - Mr. G.S. Goraya, Advocate, for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

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Sant Parkash, J

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.361 dated 24.11.2021 under Sections 21 & 29 of Narcotic Drugs & Psychotropic Substances, 1985 (for short, 'NDPS Act') registered at Police Station, City Thanesar, District Kurukshetra.

As per the prosecution version, on the basis of a secret information, a recovery of 15 grams 'Heroin' was allegedly effected from one Narender Kashyap on 24.11.2021. During investigation, Narender Kashyap made a disclosure statement to the effect that he had purchased the said intoxicant substance from co-accused Gagandeep. On interrogation from Gagandeep, he also suffered a disclosure statement that he purchased 80 grams of Heoin from Aslam (petitioner herein).

Learned counsel for the petitioner has vehemently contended that petitioner has not been named in the FIR. He was nominated only on the basis of disclosure statement of co-accused Gagandeep Singh, who himself got nominated on the basis of disclosure statement of main accused Narender Kashyap, from whose possession, alleged recovery of contraband (Heroin) was effected. It has been submitted while relying upon **Bagdi Ram vs. State of Rajasthan,** ***(2016) 3 CriCC 133*****,** that as per the legal proposition, admission/confession made by an accused during the course of investigation to a police officer is not admissible in evidence against a co-accused in absence of corroborative evidence and in the present case, even if petitioner faces trial, there is no likelihood of his conviction in absence of any admissible evidence and it would be a futile exercise to conduct trial against the petitioner. Learned counsel has contended that petitioner is ready to join investigation and co-operate with the investigating agency. Learned counsel also contended that in the facts & circumstances of the case, this Court must exercise discretion conferred upon it under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

Per contra, learned counsel for the respondent – State has opposed the prayer made in the petition. He has submitted that 55 grams of Heroin had been recovered from co-accused Gagandeep at the time of his arrest, for which a separate FIR was registered wherein also, present petition Aslam was named as the alleged supplier of contraband. The petitioner is an habitual offender and facing trial in two other cases of similar nature, viz. FIR No.141 dated 02.04.2021 under Section 21 of the NDPS Act, Police

Station, Sadar Thanesar, and FIR No.578 dated 25.11.2021 under Section 21 of the NDPS Act, Police Station, Sadar Thanesar.

I have heard rival submissions made by learned counsel for the parties and perused the record.

As per the prosecution, the petitioner, allegedly, is the supplier of contraband to Gagandeep, co-accused, on whose disclosure statement, the present FIR has been registered against the petitioner. There is nothing on record to suggest that petitioner was having enmity between him and co-accused Gagandeep due to which petitioner has been named by the co-accused. When some carrier is caught and takes name of the supplier before the police, such supplier by getting best legal assistance by taking advantage of loopholes in the system manage to escape putting up a straight-face denying his involvement in drug peddling coming up with a plea that statement of co-accused is inadmissible in evidence against him. Such type of pleas are accepted many a times, resultantly, it becomes next to impossible to trace the hierarchy in the drug racket and except for small time carriers, the persons actively involved in the drug racket, the suppliers and the controller at the top do not even get identified or detected. When on a few occasions investigating agency tries to make little progress in the investigation by going a step further towards the culprits after interrogation of the carrier, proceedings in most of the cases come to halt since such persons do not join custodial interrogation and manage to evade arrest. Although when they join investigation couched in comparative safety of pre-arrest bail, they simply deny their involvement in the racket. The investigating agency cannot do much in the matter. No person, not even of average intelligence, involved in drug trafficking would admit his involvement what to talk of providing further lead about the person(s) from whom he had been procuring the contraband and the persons to whom he had been supplying, the money earned from such activities and the investment thereof etc. The custodial interrogation is definitely elicitation oriented but with investigating agency getting little opportunity to have custodial interrogation of the supplier and other persons connected with drug trafficking, police cannot reach the big fish running the drug racket.

Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed.

So far as extraordinary power of the Court under Section 438 Cr.P.C., ordinarily arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. The privilege of the anticipatory bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail, which is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

During the present proceedings, the Court is not required to go into the merits of the case in depth and main thing to be seen is the allegations as per the prosecution version besides the other requisite ingredients to find out whether the petitioner deserves or does not deserve grant of discretionary equitable relief of anticipatory bail. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation; and there should be prevention of harassment, humiliation and unjustified detention of the accused. The Court has also to consider the nature and gravity of the accusation and the possibility of accused's likelihood to repeat similar or other offences. In the case in hand, it has come on record that present petitioner is also involved in two other similar FIRs, as detailed above. Therefore, possibility cannot be ruled out that in case of grant of bail, the petitioner will not indulge in same activities.

Now coming to the decision rendered by the Rajasthan High Court in **Bagdi Ram's case (supra)**, I am afraid, this judgment is not applicable in the facts & circumstance of the case in hand, muchless is distinguishable. Anticipatory bail is a device to secure the individual's liberty. It is neither a passport to the commission of crime nor a shield against any and all kinds of accusation, likely or unlikely. If an application for anticipatory bail is made to the High Court or the Court of Session, it must apply its own mind to the question and decide whether a case has been made out for granting such relief. The court to whom the application for anticipatory bail is made, ought to be left free in the exercise of its judicial discretion to grant bail if it considers it fit so to do on the particular facts & circumstances of the case and on such conditions as the case may warrant.

Similarly, the court must be left free to refuse bail if the circumstances of the case so warrant. No two cases are alike on facts and therefore, courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. There are several considerations, too numerous to enumerate the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and the larger interests of the public or the state are some of the considerations which the court has to keep in mind while deciding an application/petition for anticipatory bail. In the case in hand, keeping in view the seriousness of the accusations, inasmuch petitioner being a drug peddler, the judgment referred by learned counsel for the petitioner is not applicable.

In view of the above discussion, the custodial interrogation of the petitioner is essential to find out from where he had been procuring the contraband and to which other persons he had been supplying the same and also to find out the drug cartel and chain of supply. In case custodial interrogation of the petitioner is denied to the investigating agency, it shall not be able to find out the further links in the chain and to know about the drug peddlers higher in hierarchy. The drug peddlers are cautious and careful enough not to get themselves caught with the contraband rather as has been noticed they generally engage unemployed persons, drug addicts and poor persons to act as carriers so as to deliver the drugs to the consumers. Thus, the fact of their not actually been found in possession of the narcotics and drugs does not point out towards their innocence when other incriminating circumstances are there to show their involvement. The factum of petitioner having two other criminal cases registered against him rather goes to show that he has been treading the path of crime.

Keeping in view the totality of facts & circumstances of the present case where the facts are to be unearth as to from where the contraband was procured by the petitioner, allegedly sold to co-accused Gagandeep and further sold by Gagandeep to Narender Kashyap, custodial interrogation of the petitioner is required as the drug abuse is spreading its wings, which needs to be dealt with sternly. Thus, considering the grave and serious allegations against the petitioner, the facts and circumstances of the case do not call for acceptance of the present petition. The same is doomed for failure and is dismissed accordingly. It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

(Sant Parkash)
Judge

March 14th, 2022
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No