

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

207

CRM-M-2308-2022

Date of Decision : **April 06, 2022**

ANIL KUMAR

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Aman Pal, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present petition is filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.201 dated 2.8.2021 under Sections 20/21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar, Dadri.

As per the FIR which was lodged on the basis of secret information received by the police that there was sale of some illicit liquor and narcotic drugs and thereafter the police party alongwith anti narcotic cell reached Anil Medical Hall which was owned by the petitioner and was found locked and on the asking, they came to know that the plot belongs to one ex-sarpanch Dilbagh in which liquor shop is opened and this liquor shop was taken on rent by Anil (petitioner), Sanjay and Ramesh and they were running liquor business. The above mentioned three persons kept the narcotic drugs in godown/warehouse behind the liquor shop and they took the drugs from the godown and used 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 front of 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 in the liquor shop told that the liquor shop and warehouse were taken on rent by Anil (petitioner), Sanjay and Ramesh and when they asked about the whereabouts of the keys of the warehouse, Lella Ram talked to Ramesh 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 Omerex Cough Syrup inside. In the sealed boxes 120 bottles each and in opened box 10 bottles of Omerex Cough Syrup totaling 250 plastic bottles containing 100 ml each Omerex Cough Syrup were found. Hemant Grover, DCO told that

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 on which 'Sri Ganesh Fashion Hub' was written and the mobile numbers of Anil (petitioner) i.e. 9813335464 and also the phone numbers of other co-accused, namely, Ramesh and Sanjay were written. These bags were tied and when the plastic bags were opened and checked, 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 it is a case where the first FIR was lodged under the provisions of the Excise Act i.e. FIR No. 199 dated 2.8.2021 under Section 61 of the Punjab Excise Act wherein the alleged recovery of four cartons of illicit liquor i.e. total 96 bottles was made from the shop. He submitted that it was thereafter that the same police party conducted raid on the warehouse where the aforesaid contraband which is prohibited under the NDPS Act was found and a separate FIR came to be lodged which is the subject matter of the present petition in which the petitioner is seeking anticipatory bail. He further submitted that thereafter another FIR was lodged under the Medical Termination of Pregnancy Act, 1971 since there was alleged recovery of 4 kits of medical termination of pregnancy. He submitted that a separate FIR under the NDPS Act was not permissible as the alleged recovery was made by way of same sequence

of events and pertaining to one course of action and, therefore, the petitioner is entitled for the grant of anticipatory bail.

On the other hand, the learned State counsel has submitted that detailed affidavit has been filed by the DSP, Headquarter Charkhi Dadri on behalf of the State of Haryana and while referring to the aforesaid affidavit, he submitted that infact all the three incidents were independent of each other and the FIR was registered under different legislations and the complainants were also different. He submitted that first of all, an FIR was registered on the basis of secret information with regard to the 4 cartons of illicit liquor found from the shop of the petitioner and after the registration of the aforesaid FIR when the Ex-Sarpanch of the village, namely, Dilbagh informed that the drugs are lying in the godown which is adjacent to the shop then after following due procedure under the NDPS Act, search was conducted in the godown and thereafter the FIR under the NDPS Act was registered. He further submitted that both the incidents were different incidents and, therefore, it cannot be said that a single FIR ought to have been lodged. He submitted that so far as the FIR under the Medical Termination of Pregnancy Act is concerned, the same was required to be lodged on the basis of a complaint received from the authorized Officer/Designated Officer under the aforesaid Act and, therefore, a separate FIR had to be lodged under the aforesaid legislation as in the absence of the same, the same was not even sustainable because that would have been in violation of the provisions of law. He further submitted that it is not a case that in an occurrence when the further investigation was made then a separate

FIR has been lodged which is not permissible under the law but it is a case where occurrences pertaining to recovery of illicit liquor and the contraband under the NDPS Act were independent of each other and under different legislation and, therefore, separate FIRs were required to be lodged by complying with the mandatory provisions of special legislation.

He further submitted that there has been a recovery of 250 bottles of Omerex which contained Codeine and, therefore, the same falls in the category of commercial quantity. However, the recovery of ganja did not fall under the commercial quantity but the same was also recovered alongwith the bottles of Omerex and since the recovered quantity was commercial quantity, the prayer of the petitioner was hit by the bar contained under Section 37 of NDPS Act. He submitted that the petitioner has not been able to make out any ground for making a departure from the same.

The learned State counsel further referred to para No.9 of the affidavit in which it has been submitted that the petitioner is a habitual offender and besides the present case, three more FIRs have been registered against the petitioner out of which one pertained to the Medical Termination of Pregnancy Act, another pertained to the Excise Act and the third pertained to Sections 323 and 325 IPC. He further submitted that from the bags from which the contraband was recovered even the mobile number of the petitioner was found apart from the mobile number of the other co-accused. He submitted that the other co-accused, namely, Ramesh had also filed anticipatory bail petition before this Court vide

CRM-M-47973 of 2021 and the same has been dismissed by passing a detailed order by this Court on 23.11.2021. He has, therefore, vehemently opposed the grant of anticipatory bail to the petitioner.

I have heard the learned counsels for the parties.

The argument raised by the learned counsel for the petitioner that instead of lodging of one FIR, two different FIRs were lodged and, therefore, the petitioner is entitled for the grant of anticipatory bail is not sustainable. As per the affidavit filed by the State and the arguments advanced by the learned State counsel, two incidents were separate incidents and after the recovery of the illicit liquor, another information was received with regard to the actual place of drugs and after complying with the due procedure under the NDPS Act, the warehouse was opened and the contraband of commercial quantity was recovered. It is not a case where an FIR has been registered with regard to an incident and during the course of investigation, another cognizable offence is reported and the separate FIR has been lodged which is not permissible under the law. However, in the present case there are two different occurrences after a span of time and under different legislations and, therefore, after complying with due procedure, different FIR has been lodged. The anticipatory bail application of other co-accused, namely, Ramesh has been dismissed by this Court by way of passing of a detailed order. The recovered quantity was of commercial quantity and the learned counsel for the petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of NDPS Act. Apart from the same, as per the learned State counsel and the affidavit filed by

the State, the petitioner is involved in as many as three more cases. Therefore, considering the aforesaid facts and circumstances, this Court does not deem it fit and proper to grant anticipatory bail to the petitioner.

Therefore, finding no merit in the present petition, the same is, hereby, dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

April 06, 2022
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No