

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

214

CRM-M-11195-2022

Date of Decision : **August 23, 2022**

GURMEET

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.107 dated 31.1.2022 under Sections 21(b), 61, 85 of NDPS Act, registered at Police Station HTM, Hisar, District Hisar.

It has been submitted by the learned counsel for the petitioner that the petitioner was granted interim bail by this Court vide order dated 17.3.2022 and in pursuance of the aforesaid order, the petitioner has already joined the investigation and has fully cooperated with the investigation process and has, therefore, prayed that the interim order may be made absolute.

He further submitted that it is a case where three persons were apprehended by the police and from them there was a recovery of 19.70 grams of Heroin and thereafter the disclosure statements made by the aforesaid co-accused, the present petitioner was nominated. He

submitted that it is a case where the petitioner is having clean antecedents and is not involved in any other case and there is no material with the police to connect the petitioner with the present offence apart from the disclosure statements of the co-accused. He further submitted that in the absence of any corroborative evidence to connect the petitioner with the present offence, the disclosure statements of the co-accused are not admissible *per se* in evidence and has also relied upon the judgment of the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1*. He submitted that the alleged recovery from the co-accused does not fall in the category of commercial quantity. He further submitted that the petitioner is known to one of the co-accused, namely, Pushpender and the police has implicated the petitioner only on the ground that he had telephonic exchanges for one week prior to the alleged occurrence which itself would not be sufficient to connect the petitioner unless there are any recordings or any other sufficient material available with the police.

On the other hand, the learned State counsel while referring to the affidavit filed by the State has submitted that it is correct that the petitioner is not involved in any other case and his name has been nominated on the basis of the disclosure statements of the co-accused. He has, however, submitted that there were as many as 36 calls between the petitioner and the other co-accused, namely, Pushpender for a period of one week prior to the present offence. He submitted that in pursuance of the order passed by this Court on 17.3.2022, the petitioner has joined the investigation but he has not cooperated with the investigation process.

On a query being raised to the learned State counsel as to in what respect the petitioner has not cooperated with the investigation process, he submitted that the petitioner has not disclosed as to from where the aforesaid Heroin was brought and bought by him and also submitted that during the course of investigation, the petitioner has also made disclosure statement with regard to the fact that he had given the aforesaid contraband to the co-accused.

I have heard the learned counsels for the parties.

In pursuance of the order passed by this Court on 17.3.2022 whereby the petitioner was granted interim bail, the petitioner has already joined the investigation. However, the learned State counsel has opposed the grant of anticipatory bail to the petitioner only on the ground that the petitioner has not cooperated with the investigation process. The alleged recovery does not fall in the category of commercial quantity and the recovery has been made from the other three co-accused. The petitioner has been nominated on the basis of the disclosure statements made by the other co-accused. The argument raised by the learned State counsel that the petitioner has not cooperated with the investigation process despite joining the investigation on the ground that he did not disclose the source has been controverted by the learned counsel for the petitioner during the course of arguments by submitting that the petitioner has rather been falsely implicated in the present case and has nothing to do with the confiscation of Heroin and, therefore, the police is only forcing the petitioner to get involved in the present case and that was the reason as to why the disclosure statement was recorded and has submitted that any

statement made before the police officer is not admissible in evidence. The learned counsel for the petitioner has also argued that the mere fact there were telephonic conversation between the petitioner and the co-accused would not raise any presumption that the petitioner is involved in the present case unless there is any specific recording to that effect. However, a perusal of the affidavit filed by the State as well as the argument raised by the learned State counsel, it is apparent that only the number of phone calls have been mentioned but not the recording. Apart from the same, at this stage there is no sufficient material available with the police to connect the petitioner with the present offence apart from the disclosure statements made by other co-accused. Therefore, in view of the aforesaid facts and circumstances and while striking a balance between the liberty of an individual on the one hand and the other factors with regard to fleeing from justice or qualitative custodial investigation on the other hand, this Court is of the view that the petitioner deserves the concession of anticipatory bail since it is not the case of the State counsel that in case the petitioner is granted bail, then he may abscond.

Consequently, the present petition is allowed and the order dated 17.3.2022 is, hereby, made absolute.

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.

(JASGURPREET SINGH PURI)
JUDGE

August 23, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No