

CRM-M-13593-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-13593-2021
Reserved on: 07.04.2022
Pronounced on: 18.04.2022

Harwinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sanjeev Kumar Arora, Advocate for the petitioner.
Mr. H.S. Sitta, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
129	23.10.2020	Bariwala, District Sri Muktsar Sahib	22 & 29 of NDPS Act (Section 29 of NDPS Act added later on)

1. The petitioner, apprehending arrest on being named by the co-accused as the seller of Tramadol, from whom the police had recovered the commercial quantity of substance, in the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail. Vide order dated 24-3-2021, a co-ordinate bench of this court had granted interim protection to the petitioner, and the said protection is continuing till date.
2. In paragraph 10 of the petition, it is declared that the accused has no criminal history.
3. Ld. Counsel for the petitioner contends that the petitioner has been roped in in view of the disclosure statement of the co-accused, and such statement is inadmissible in law given the judicial pronouncement of Hon’ble Supreme Court in Toofan Singh. Thus, the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. Opposing the bail, the contention on behalf of the State is that apart from disclosure statement, there are call details connecting the petitioner with the accused Kuldeep Singh. Ld. counsel further contends that thebail encourages criminals. While opposing the bail, the contention on behalf of the State is that drug menace is rapidly

increasing.

CRM-M-13593-2021REASONING:

5. As per the prosecution's case, the police had recovered 1250 tablets of Clovil 100-SR, containing Tramadol. As per the report of FSL, the weight of substance in each tablet is 437.41 mg. Thus, the total weight comes to around 546 762.5 milligrams, i.e., 546 grams. The substance Tramadol finds mentioned at entry no. 238 ZH, which prescribes the quantity lesser than 5 grams of Tramadol as 'small quantity' and quantity greater than 250 grams as 'commercial quantity'. Thus, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

6. Paragraph 5 of the status report filed by Affidavit of the concerned DySP, reads as follows:

"That the co-accused Kuldeep Singh @ Kala was arrested on 23.10.2020 in the evening hours when the contraband was also recovered from him. On the same day i.e. 23.10.2020 there were six mobile calls between the petitioner and co-accused Kuldeep Singh @ Kala in the morning hours at 8.59 am, 9.13AM, 9.21AM, 9.34AM, 9.48AM, and 9.52AM. Mobile No. of the petitioner is 95927-40045, mobile No. of co-accused Kuldeep Singh is 98727-81875. The petitioner and co-accused Kuldeep Singh are doing the work as Drivers. The plea of the petitioner and co-accused Kuldeep Singh are in the same business of sale of cars and have business rivalry, is totally false and baseless in the wake of the fact that the petitioner and co-accused Kuldeep Singh talked over mobile phones on the day of occurrence and there is no business rivalry between them. It is denied that the petitioner has been falsely implicated in the FIR in question. No illegality or impropriety has been committed by the police in the present case. There has been compliance of all the provisions of NDPS Act. There is sufficient evidence against the trial of the case. The recovered contraband belonged to the petitioner and co-accused. The custodial interrogation of the petitioner is required to investigate the case effectively and to find out the modus operandi of the whole operation conducted by the petitioner in connivance with co-accused in commission of crime. In view of grave nature of crime committed by the petitioner, the petitioner is not entitled to the concession of pre-arrest bail. As such, no cause of action has been accrued to the petitioner to file the present petition."

7. The explanation offered by the petitioner is not corroborated by anything, documentary or otherwise. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. Thus, the petitioner has failed to make a case for bail at this stage.

8. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 CrPC.

9. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

CRM-M-13593-2021

Petition dismissed in aforesaid terms. All the Interim protection orders, including order dated 24-03-2021 are immediately recalled. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

18.04.2022
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Whether speaking/reasoned: Yes
Whether reportable: **No.**