

CRM-M-15511-2021 (O&M)

Through video conference
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-M-15511-2021 (O&M).
Decided on: February 24, 2022.

Jaibir

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.P.S.Ahluwalia, 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 grant of anticipatory bail in FIR No.158 dated 12.7.2020, under Sections 18-29-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Narwana, District Jind.

As per FIR, a secret information was received by the

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police that one Sanjay son of Prem Singh, who was doing the business of selling intoxicating substance, is coming from Gurthali through Mahal Kheda Road on a motorcycle which was without number plate mark Hero Splendor of black colour to supply large number of intoxicants and if his motorcycle is stopped and checked, then intoxicant substance can be recovered in large quantity. Thereafter, the provision of Section 42 of the NDPS Act, was complied with. The police party stopped the motorcyclist who tried to turn it back and due to hurry, the bike had stopped. Thereafter, aforesaid Sanjay was apprehended and the provision of Section 50 of the NDPS Act, was complied with and there was recovery of 500 grams of opium from aforesaid Sanjay.

During the course of investigation, aforesaid Sanjay who was caught on the spot made a disclosure statement by disclosing the name of his father namely Prem Singh and thereafter, after second disclosure statement was made nominating his mother namely Asha as well as and one Talu. Thereafter, it was found that name of the present petitioner is also Talu.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was falsely implicated in view of the facts and circumstances of the present case and even as per the stand taken by the State. He submitted that firstly the name of the petitioner has been nominated on the basis of second disclosure statement of the person who was caught on the spot namely Sanjay and such kind of disclosure statement

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made before the police by a co-accused is not admissible in evidence in view of the law laid down by Hon'ble the Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1**, and secondly, even as per the affidavit filed by the State dated 6.9.2021, there is a material discrepancy in the stand taken by the State itself. On the one hand, the State has taken a stand in para 8 of the affidavit that a deal was struck between Prem Singh and present petitioner at Barwala and in the later part of the aforesaid para, it has been stated that the data suggests that both of them were at Hansi which is at a distance of about 45 kilometers. He submitted that it is a case where the alleged recovery of 500 grams of opium does not fall in the category of commercial quantity under the NDPS Act and the petitioner has clean antecedents and is not involved in any other case under the NDPS Act, except the one which was under the Gambling Act, in which a fine of Rs.50/- was imposed and it was only because of the aforesaid involvement of the petitioner in the Gambling Act, that his name has been planted in the present case. He submitted that apart from the same, other co-accused namely Sanjay who was caught on the spot and was the main accused has been granted regular bail by the learned trial Court and co-accused who was nominated on the basis of first disclosure statement namely Prem Singh father of Sanjay, has also been granted regular bail by this Court vide order dated 10.6.2021, passed in CRM-M-18142-2021 and the third accused namely Asha who is mother of Sanjay, the main accused, has also been granted anticipatory bail by this Court vide order dated

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21.9.2020 passed in CRM-M-20983-2020 (Annexure P-2). He submitted that in view of the aforesaid facts and circumstances, the petitioner may also be considered for the grant of anticipatory bail and on instructions, he has stated that the petitioner undertakes to join investigation as and when required by the police and will cooperate in the investigation process.

On the other hand, learned State counsel has submitted that it is correct that name of the petitioner was nominated on the basis of second disclosure statement made by the main accused namely Sanjay and one of the co-accused namely Asha who was also nominated on the basis of second disclosure statement has been granted anticipatory bail vide Annexure P-2. He submitted that it is also correct that co-accused Sanjay and his father Prem Singh have been released on regular bail. He by referring to the affidavit filed by the State further submitted that the petitioner is not involved in any other case except one under the Gambling Act, in which he was fined with Rs.50/-.

I have heard the learned counsel for the parties.

The name of the petitioner has been nominated on the basis of the second disclosure statement made by main accused Sanjay. The disclosure statement of co-accused per se is not admissible in evidence unless there is other sufficient evidence to show that accused who has been nominated on the basis of disclosure statement has any connection with the offence. In the present case, apart from the disclosure statement, there does not seem to be any other sufficient material with the State particularly in

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view of the fact that stand taken by the State seems to be self-contradictory. The petitioner is not involved in any other case except one under the Gambling Act, in which he was fined with Rs.50/-. Although an objection has been taken by the State in the affidavit that it cannot be ruled out that the petitioner may violate the terms and conditions of the bail order. On a query being put to the learned State counsel whether there is any sufficient material available to take such an objection, no justifiable reason has come forward. It appears that the objection has been taken in a mechanical manner. Apart from above, the petitioner has undertaken to join investigation as and when required by the police and to fully cooperate in the investigation process. Further, since there is recovery of 500 grams of opium the bar contained under Section 37 of the NDPS Act, will also not be attracted.

Therefore, considering the facts and circumstances of the present case, this Court deems it fit and proper to grant the concession of anticipatory bail to the petitioner. Consequently, the present petition is allowed. It is directed that the petitioner shall appear before the Arresting/Investigating Officer and join the investigation and will be released on anticipatory bail to the satisfaction of the Arresting/Investigating Officer and thereafter will also continue to join the investigation as and when called upon to do so and fully cooperate in the investigation process. The petitioner shall abide by all the conditions as provided under Section 438 (2) Cr.P.C.

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Pending misc. application, if any, shall also stand disposed of accordingly.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

February 24, 2022	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No