

209

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

\*\*\*\*

**CRM-M-17707-2021**

**Date of Decision: 18.05.2022**

Mohammad Shad

..... Petitioner

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Sunil Panwar, Advocate,  
for the petitioner.

Mr. Ranvir S. Arya, Addl. A.G., 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 to the petitioner in case bearing FIR No.183 dated 26.06.2020, under Sections 22(C) of the N.D.P.S. Act, 1985 (Act 61 of 1985), registered at Police Station Tauru, District Mewat.

As per the FIR, one Sub Inspector along with constable Pankaj while they were patrolling got a secret information that the petitioner, namely, Mohammad Shad son of Akhtar, who is involved in smuggling of intoxicating medicines has just gone walking towards the village Shikarpur and is carrying one blue coloured plastic sack. If a raid is immediately conducted then he can be apprehended along with intoxicating medicines. With regard to the aforesaid information, the Sub Inspector directed MHC Ratibhan, Police Station Sadar, Tauru to record a report in the daily diary regarding this

information and made attempts at the spot to associate public witness in the raiding party. However, all of them expressed their own difficulty and without disclosing their names and addresses went away. Thereafter, the Sub Inspector along with the employees and the government vehicle, left for village Shikarpur. Immediately on reaching the bus stand of village Shikarpur, in front of the two shops constructed on the road turning towards village Shikarpur, a young boy was seen carrying a blue coloured plastic sack on his shoulder. On seeing the police party, he succeeded in running away after throwing the sack at the spot itself. Upon falling down, the mouth of the sack got opened and boxes of tablets came out from the sack. On one box, it was written *Prozolan-0.5* and on the other, it was written *Tramadol Hydrochloride Tablet 100 mg*. Photographs of the medicines were clicked and sent on the WhatsApp number to Sh. Dinesh Kumar, Drug Inspector, Nuh and after preparing details of the medicines, a separate application was sent on his email for taking opinion. After some time, the Drug Inspector sent his opinion on email wherein he wrote that these drugs were *Tramadol Hydrochloride* and falls under the N.D.P.S. Act. The other drug contained *Alprazolam*, which also falls under the N.D.P.S. Act. Thereafter, the sack was checked and total 24 boxes *Prozolan 0.5* and 34 boxes of *Tramadol Hydrochloride Tablets 100 mg*. were recovered from the sack. After calculating the total tablets, they came out to be 6800 tablets of *Tramadol Hydrochloride* and 19200 tablets of *Alprazolam 0.5* and the total weight of all the tablets were came out to be 9.744 kgs. Thereafter, the matter was given to Sub Inspector Bir Singh, Police Station Tauru, for investigation.

Learned counsel for the petitioner has submitted that the present

case was planted upon the petitioner and he had been falsely implicated at the behest of the police informer, namely, Asim son of Jasrath, resident of village Shikarpur, who was inimical towards the petitioner and his family. While referring to Para-3 of the petition, he submitted that aforesaid police informer and his father are accused in FIR No.258/2015 registered at Police Station Tauru in which the aforesaid persons and 65 other accused, after forming unlawful assembly, caused injuries to one Ajruddin and 20 others and looted gold, cash etc. In that case the real maternal uncle of the petitioner, namely, Samshu, is the witness against Asim and Jasrath and rather Samshu is the star witness in that case and the aforesaid Asim is very close to the Sub Inspector Bir Singh, and therefore, they have, in connivance with each other, planted the present case upon the petitioner. He further submitted that the provisions of Sections 50 & 51 of the N.D.P.S. Act were not complied with because no Gazetted Officer was associated in the alleged raid and recovery proceedings. He also submitted that two days prior to the registration of the present FIR, another FIR was also registered against the petitioner i.e. FIR No.140 dated 24.06.2020 at Police Station Sadar, Ratia, District Fatehabad under the N.D.P.S. Act and in that case he was nominated on the basis of disclosure statement of the co-accused in which he has been granted anticipatory bail.

Learned counsel for the petitioner has further submitted that after the notice of motion was issued by this Court on 28.04.2021 and he was granted interim anticipatory bail, he has joined the investigation process and thereafter, a reply was filed by the Deputy Superintendent of Police, Tauru, which was totally an evasive reply and therefore, this Court on 09.11.2021 had directed the Inspector General of Police, South Range, Gurugram to look into

the matter himself and file his own affidavit since the issue raised by the petitioner in the petition were not answered by the Deputy Superintendent of Police in the reply.

On the other hand, Mr. Ranvir Singh Arya, learned Additional Advocate General, Haryana has submitted that in pursuance of the orders passed by this Court on 09.11.2021, the Inspector General of Police, South Range, Rewari has filed his own affidavit dated 25.01.2022. He, while referring to the affidavit and also on the basis of instructions from the S.I. Surjeet, submitted that it is a case where there was a huge recovery of 6800 tablets of *Tramadol Hydrochloride* and 19200 tablets of *Alprazolam 0.5*, totalling the 26000 tablets having a total weight of 9.744 kgs. which the petitioner was carrying along with him when secret information was received by the police and when they made a raid at the place of information, the petitioner left the bag and succeeded to flee. While further referring to the affidavit filed by the Inspector General of Police, he submitted that it has been so stated in the affidavit that during the course of investigation, no such evidence came on record, which can prove that the petitioner has been falsely implicated in the present case at the instance of Asim and S.I. Bir Singh. Furthermore, if the name of the secret informer is disclosed, it can endanger the life of the secret informer. The allegations that S.I. Bir Singh was hand in glove with Asim for planting the petitioner-accused in the present case is totally baseless and concocted story and rather sufficient evidence has come forth against the petitioner during the course of investigation. It has been further stated in the affidavit that so far as the allegation made by the petitioner with regard to the maternal uncle, namely, Samshu being witness in another

case is concerned, as specifically alleged by the petitioner, the same was also false and baseless. He further submitted that the Superintendent of Police, Nuh tried to cross-verify the facts as stated by the petitioner in Para-3 of the present petition that Samshu, maternal uncle of the petitioner is a star witness in FIR No.258 dated 19.07.2015 in which Asim is an accused. On verification of the facts of the aforesaid FIR and a perusal of the various charge-sheets filed in the case, it was found that the above said Samshu, maternal uncle of the petitioner is nowhere found to be any witness in the case. This proves that the petitioner has fabricated false stories, and therefore, it can be firmly said that the petitioner was not planted in the present case. It is further stated in the affidavit that so far as the presence of S.I. Krishan Kumar and S.I. Bir Singh at the crime spot is concerned, though at present was not possible to collect CDRs of the mobile locations to confirm their presence on the crime spot but as per the contents of the FIR, case diary as well as GD entry, it is very well established that S.I. Bir Singh and S.I. Krishan Kumar were indeed present at the crime spot. Furthermore, there is sufficient material available in the present case to connect the petitioner with the offence and proper inventory report has been got prepared by the investigating officer. The present FIR was registered byname against the petitioner and therefore, the allegation that his name has been disclosed in a disclosure statement of other accused is totally baseless. It has been further stated in the affidavit filed by the Inspector General of Police that so far as the earlier reply filed by the Deputy Superintendent of Police being evasive is concerned, the Superintendent of Police, Nuh has recommended departmental action against the Deputy Superintendent of Police, Tauru, who filed the evasive reply before this Court and has also issued

advisory note to Sudhir Taneja, Deputy Superintendent of Police, who got vetted the reply and the matter has now been sent to Director General of Police, Haryana, Panchkula for initiating departmental action against both the Deputy Superintendents of Police. It is further stated in the affidavit that however, these irregularities of filing the evasive reply before this Court does not affect the impact of the investigation, which is still going on. Furthermore, the petitioner in pursuance of the order passed by this Court joined the investigation and suffered his disclosure statement and has also demarcated the place of incident. The Superintendent of Police, Nuh is himself verifying the criminal history of the petitioner as to whether he is involved in some other cases or not. Apart from the same, the criminal history of the petitioner is also being checked up from the concerned Police Station i.e. Sadar Tauru, Nuh and Sadar Palwal and found cases registered against him which are being verified.

Learned Additional Advocate General, Haryana further submitted that the primary grievance raised by the petitioner in the present petition was that the present case has been planted upon him whereas now as per the affidavit filed by the Inspector General of Police, the very basis on which the petitioner had made such a grievance got demolished. He further submitted that the petitioner had stated that due to enmity with one Asim in whose case the maternal uncle of the petitioner was a star witness, the present petitioner was involved in the present case, whereas on verification it was found that the maternal uncle of the petitioner was not a witness in that case. He also submitted that another FIR was registered against the petitioner although on the basis of disclosure statement two days before the present FIR i.e. FIR No. 140 dated 24.06.2020 in which the petitioner was granted anticipatory bail but

the custodial interrogation of the petitioner was required so as to ascertain not only his involvement in the other cases but also the source from where he got huge quantity of contraband which was weighing 9.744 kgs. consisting of 26000 of tablets of *Tramadol Hydrochloride and Alprazolam 0.5*. He also submitted that the confiscated quantity was not only huge but also falls within the category of commercial quantity and therefore, the bar contained under Section 37 of the N.D.P.S. Act would apply in the present case, and therefore, the present petitioner is not entitled for the grant of anticipatory bail. He further submitted that the smuggling of *Tramadol Hydrochloride and Alprazolam 0.5* can be curtailed by way of ascertaining the source and therefore, it is a fit case where custodial interrogation of the petitioner is required for the purpose of qualitative interrogation. He also submitted that the provisions of Section 50 of the N.D.P.S. Act will not apply in the present case because it was not a case of personal search.

I have heard the learned counsel for the parties.

It is a case where the petitioner has been named in the FIR on the basis of a secret information. There was an alleged recovery of 26000 tablets of *Tramadol Hydrochloride and Alprazolam 0.5* weighing 9.744 kgs. The primary allegation of the petitioner in the petition was that the present case was planted upon the petitioner due to enmity with one Asim, who was involved in some other case in which the maternal uncle of the petitioner was a star witness. Since earlier the Deputy Superintendent of Police, had filed an evasive reply, this Court in order to ascertain the factual position had directed the Inspector General of Police to look into the matter himself and file his own affidavit. Thereupon, the Inspector General of Police had filed his own

affidavit in which it has been stated that on verification it has been found that that the maternal uncle of the petitioner, namely, Samshu was not a witness in the case in which Asim was involved, and therefore, the allegations made by the petitioner regarding the false implication due to enmity was found to be baseless. So far as the grievance of the petitioner regarding non-compliance of Section 50 of the N.D.P.S. Act is concerned, the argument raised by the learned Additional Advocate General, Haryana that it was not a case of personal search, carries weight. So far as the plea raised by the learned Additional Advocate General, Haryana, that the present petition for anticipatory bail is hit by the bar contained under Section 37 of the N.D.P.S. Act is concerned, the same would also require consideration. A departure can always be made from the bar contained under Section 37 of the N.D.P.S. Act subject to two conditions being co-existent. Firstly, the Court has *prima facie* reasons to believe that the petitioner is not guilty of any offence and secondly, there is no likelihood that the petitioner/accused may repeat the offence or may flee or abscond from justice. In the present case, both the aforesaid factors are absent. There is no ground available with the petitioner on the basis of which the Court may come to conclusion that there are *prima facie* reasons to believe that the petitioner is not guilty of any offence. Furthermore, the petitioner is also involved in another case which was lodged two days prior to the present FIR and as per the affidavit filed by the Inspector General of Police, petitioner's involvement in other cases are also being verified. In addition to this, the recovery from the petitioner in the present case was very huge, therefore, this Court is of the considered opinion that no ground is made out by the petitioner on the basis of which it can be said that a departure can be made

from the bar contained under Section 37 of the N.D.P.S. Act, therefore, the present case is hit by the aforesaid bar under Section 37 of the N.D.P.S. Act.

Therefore, considering the aforesaid facts and circumstances of the present case, the present petition is devoid of any merit and is hereby dismissed.

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

**18.05.2022**

*Bhumika*

**(JASGURPREET SINGH PURI)**  
**JUDGE**

- |                               |     |
|-------------------------------|-----|
| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable:        | Yes |