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

**CRM-M-18988-2022
Date of Decision: 06.05.2022**

Raj Kumar @ Raja

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manjinder Singh Saini, Advocate,
for the petitioner.

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.0036 dated 24.04.2022, under Section 21 of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Mehtiana, District Hoshiarpur.

As per the FIR, the Police party got information that two persons, namely, William and Joshan Masih are indulged in selling *Heroin* and at present at the play ground they are selling the same and if the raid is conducted then they can be arrested. Thereafter, when the raid was conducted these aforesaid two persons were apprehended along with 70 grams and 30 grams of *Heroin* respectively. On their disclosure statement, the present petitioner was also nominated and Section 29 of the NDPS Act was added.

Learned counsel for the petitioner submitted that the petitioner

has been nominated on the basis of a disclosure statement which is not admissible in evidence, and therefore, the petitioner is entitled for the grant of anticipatory bail. He further submitted that the alleged recovery from the co-accused was also of non-commercial quantity although it was *Heroin* and therefore, it was not hit by the bar contained under Section 37 of the N.D.P.S. Act.

On the other hand, Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab has submitted that he has received an advance copy of the present petition and he has gone through the same. He has also sought the instructions from the concerned Investigating Officer. He submitted on instructions from S.I. Kuldip Singh that the petitioner has actively and deliberately concealed material facts from this Court. He further submitted that the petitioner is involved in three more cases which are as follows:-

1. FIR No.152 of 2020, under Sections 22 & 29 of the NDPS Act registered at Police Station Mehtiana, District Hoshiarpur.
2. FIR No.101 of 2021, under Section 22 of the NDPS Act registered at Police Station Mehtiana, District Hoshiarpur.
3. FIR No.93 of 2020, under Sections 323, 324 & 321 of the IPC at Police Station Mehtiana, District Hoshiarpur.

Learned counsel for the petitioner further submitted that it is a case where the petitioner had sold the *Heroin* to two persons who were caught at the spot and custodial interrogation of the petitioner is required in view of the fact that the source of *Heroin* has to be established and it is insignificant as to whether the confiscated quantity was of a commercial quantity or not. So far as the prayer of the petitioner for the grant of anticipatory bail is concerned, he

submitted that the petitioner ought to have come to this Court with clean hands while disclosing all the material facts which he has not done and therefore, does not deserve the concession of anticipatory bail.

I have heard the learned counsel for the parties.

As per the allegations, two persons were caught on the spot along with 100 grams of *Heroin* and thereafter, the petitioner's name was nominated on the ground that he had supplied the *Heroin* to the aforesaid two persons. While the matter was being heard, the learned State counsel specifically pointed out that the petitioner has not come to this Court with clean hands and has deliberately and actively concealed the material facts from this Court. The learned State counsel has given a list of the cases in which the petitioner is involved but the petitioner has concealed the aforesaid facts from this Court. A perusal of Para 9 of the petition would show that it has been specifically stated by the petitioner that he is not involved in any such similar case and there is no FIR against the petitioner pending in any Court. The present petition is also supported by an affidavit of the petitioner. Para 9 of the petition is reproduced as under:-

“9. That petitioner is not involved in any such similar case and there is no any other FIR against the petitioner pending in any Court.”

The argument raised by the learned State counsel that the petitioner had supplied the *Heroin* to the persons who have been apprehended and therefore, in order to ascertain the source of *Heroin*, the custodial interrogation of the petitioner is required, does carry weight, especially in view of the fact that the petitioner does not have clean antecedents and is involved in three more cases as aforesaid and apart from the same, he has actively and

deliberately concealed the material facts from this Court. The present petition has been filed in which it has been specifically stated that the petitioner is not involved in any other case or FIR is supported by the affidavit of the petitioner and therefore, ordinarily proceedings should have been initiated against the petitioner for perjury. However, this Court is of the view that the present petition can be dismissed by imposing costs upon the petitioner.

Therefore, in view of the aforesaid position, the present petition is hereby dismissed with Rs.20,000/- as cost. The petitioner is directed to deposit the same with the Chief Judicial Magistrate, Hoshiarpur within three months from today.

On being deposited with the CJM, Hoshiarpur, the CJM shall transfer the same to the Punjab Legal Services Authority. In case, the petitioner does not deposit the same within the aforesaid period then the CJM shall get the amount recovered from the petitioner in accordance with law.

A copy of the order be sent to the CJM, Hoshiarpur.

06.05.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |