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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25170-2022
Date of Decision: 16.08.2022

Bal Kishan

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. D.S. Virk, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

An affidavit has been filed by the Deputy Superintendent of Police, Sirsa which is taken on record.

Copy has already been supplied to the learned counsel for the petitioner.

The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.413 dated 21.05.2022, under Sections 21B/29/61/85 of the NDPS Act, registered at Police Station City Sirsa, District Sirsa.

The learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and his name was nominated on the basis of disclosure statement of the co-accused from whom there was a recovery 8.95 grams of heroin. He further submitted that although there are

two other cases against the petitioner but so far as the present case is concerned, he was not named in the FIR and his name has been nominated on the basis of the disclosure statement of a co-accused which is not admissible in evidence per se.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted while referring to the affidavit filed by the State that it is a case where the co-accused namely Anil Kumar was apprehended alongwith 8.95 grams of heroin and during investigation it was found that the aforesaid Anil Kumar has studied upto M.Tech. and was doing agriculture work and he is addicted to intoxicant substances. He informed as well as disclosed to the police that the petitioner is indulging in the sale of drugs and had provided heroin not only to him but also to other persons and commission was paid to him in this regard. The co-accused Anil Kumar further disclosed that he got addicted to heroin on his taking heroin from the present petitioner who used to sell him. The learned Deputy Advocate General further submitted that the petitioner is a habitual offender and he is also involved in two more cases under the NDPS Act regarding which, details have already been given in para No.9 of the affidavit. He further submitted that in both the cases the petitioner is already on bail and during the period of bail, he has now again supplied heroin to the co-accused namely Anil Kumar. He further submitted that it is not a case where there is an allegation against the petitioner that he has supplied heroin for the first time but it is a case where he is a habitual offender and for the purpose of ascertaining the source from where he got the heroin not only once but for a number of times to the co-accused Anil Kumar and also to other persons, his custodial interrogation is required. The learned State

counsel further referred to the judgment of Hon'ble Supreme Court in *State represented by CBI Versus Anil Sharma [1997(7) SCC 187]* and contended that it is a fit case where for the purpose of elicitation of truth and to ascertain the source of heroin and to break the chain, the custodial interrogation of the petitioner is required. He further referred to a latest judgment of the Hon'ble Supreme Court in *State of Haryana Versus Samarth Kumar [Criminal Appeal No.1005 of 2022]* and contended that the argument raised by the learned counsel for the petitioner that the name of the petitioner was nominated on the basis of disclosure statement of a co-accused will not be admissible will not be available at the time of consideration of grant of anticipatory bail to the petitioner since the same argument may be available to an accused at the time of considering the regular bail. He further submitted that the menace of heroin and other intoxicant substances has increased during past number of years and in order to curb this menace, the source has to be ascertained and since the petitioner is involved in two more cases and in both the cases he was apprehended on the spot alongwith heroin which although did not fall in the commercial quantity but it makes it very clear that the petitioner is a supplier of heroin. He has, therefore, opposed the grant of anticipatory bail to the petitioner and has prayed for dismissal of the same.

I have heard the learned counsel for the parties.

The only argument which has been raised by the learned counsel for the petitioner was that the name of the petitioner was nominated on the basis of disclosure statement of a co-accused and according to the learned counsel for the petitioner, it is not admissible in evidence per se.

However, from the argument raised by the learned Deputy Advocate

General, Haryana based upon the affidavit filed by the State it appears that the name of the petitioner was actually nominated on the basis of disclosure statement of a co-accused but at the same time the petitioner is also stated to be a habitual offender and is involved in two more cases under the NDPS Act where he was caught on the spot with heroin although it did not fall in the category of commercial quantity. The argument raised by the learned State counsel that custodial interrogation for elicitation of truth is required where the petitioner had been allegedly supplying heroin to a co-accused who is M.Tech. and is a drug addict coupled with the other factors that he was involved in two more cases of NDPS Act whereby he was apprehended alongwith heroin does carry weight and cannot be ignored.

This Court is of the view that looking at the number of cases under the NDPS Act in the State of Haryana and the growing menace of heroin and other psychotropic substances, the ascertainment of sources of heroin for breaking the chain required utmost attention. So far as the argument raised by the learned counsel for the petitioner that the disclosure statement of a co-accused is not admissible in evidence cannot vest any right in the petitioner for grant of anticipatory bail in view of the judgment of the Hon'ble Supreme Court in *State of Haryana Versus Samarth Kumar (Supra)*. Similarly, even if the quantity does not fall in the category commercial quantity, still it would not vest any right in the petitioner for grant of anticipatory bail since the other factors which are relevant for consideration should also be given due weightage while considering the prayer for grant of anticipatory bail.

Therefore, considering the totality and circumstances of the

petitioner.

Consequently, the present petition is dismissed.

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

16.08.2022
rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No