

205
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30854-2021
Date of Decision: 01.04.2022

Ram Chander Bijarnia

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Arpandeeep Narula, 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 the grant of anticipatory bail to the petitioner in FIR No.221 dated 10.07.2021, under Section 22(c) of NDPS Act, registered at Police Station Ellenabad, District Sirsa.

The learned counsel for the petitioner has submitted that in pursuance of the interim bail granted to the petitioner vide order dated 04.08.2021 the petitioner has joined investigation and he has fully cooperated with the investigation process and, therefore, interim bail granted to him may be confirmed. He further submitted that it is a case where 28800 tablets of Tramadol were confiscated from a co-accused namely Sunil who was caught on the spot and thereafter on the disclosure statement made by the co-accused, he was nominated in the present case on the ground that the said intoxicant tablets were supplied to him by the

present petitioner. He further submitted that the disclosure statement of a co-accused is *per se* not admissible in evidence and has referred to the judgment of the Hon'ble Supreme Court in ***Tofan Singh Versus State of Tamil Nadu [2021(1) RCR (Criminal) 1]***. He further submitted that apart from the disclosure statement there is no other material available with the police to connect the petitioner with the present offence and purely on the basis of disclosure statement of the co-accused which is not admissible in evidence, the petitioner could not have been nominated as an accused. He further submitted that the petitioner has clean antecedents and is not involved in any other case and, therefore, he may be considered for the grant of anticipatory bail.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has submitted that an affidavit has been filed by the Deputy Superintendent of Police Ellenabad, District Sirsa in the present case and while referring to the aforesaid affidavit he submitted that it is correct that the name of the petitioner was nominated on the basis of disclosure statement made by a co-accused namely Sunil and as per para No.8 of the affidavit the petitioner is not involved in any other case.

On a query being raised to the learned State counsel as to whether there is any sufficient material available with the investigating agency apart from the disclosure statement, he referred to para No.6 of the reply in which it has been stated that the call details of the petitioner and the co-accused Sunil were obtained from Cellular Companies and from a perusal of the same it transpires that both of them were in constant touch with each other. He further submitted on instruction from ASI Anil Kumar that the petitioner has joined investigation and he is not required for

custodial interrogation.

I have heard the learned counsel for the parties.

Although the recovery from the co-accused is of commercial nature and the petitioner has been nominated on the basis of disclosure statement and there is no sufficient material available with the police, the bar contained under Section 37 of the NDPS Act is required to be considered. In the present case the State has not opposed the grant of anticipatory bail to the petitioner and, therefore, the bar contained under Section 37 of the NDPS Act will not apply to the petitioner.

In view of the above, the present petition is allowed and order dated 04.08.2021 is hereby made absolute.

01.04.2022

rakesh

Whether speaking
Whether reportable

**(JASGURPREET SINGH PURI)
JUDGE**

: Yes/No
: Yes/No