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

CRM-M-30962-2022

Date of decision : 20.07.2022

Vinod Godara

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vikas Bishnoi, Advocate for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.213 dated 29.04.2022 registered under Sections 186, 307, 332, 353, 224 (added later on) and 427 of the Indian Penal Code, 1860 and Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the NDPS Act”) at Police Station Sadar Fatehabad, District Fatehabad.

Learned counsel for the petitioner has submitted that in the present case, the alleged recovery has been effected from Bharat Singh @ Chanan and Mati Dass @ Popli and the petitioner is sought to be implicated solely on the basis of disclosure statements made by the said two co-accused and even in the said disclosure statements, as per case of the petitioner, the

name has been mentioned as Vinod resident of Bhoda Hoshanak whereas the present petitioner is Vinod Godara resident of Village Kumharia.

Notice of motion.

On advance notice, Mr. Anmol Malik, DAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and submitted that in the present case, the recovery of 1000 strips containing 10 intoxicant tablets each, totalling 10000 intoxicant tablets NRX Tramadol Hydrochloride Prolonged had been effected from the co-accused and the said recovery would fall under commercial quantity, thus, attracting the bar under Section 37 of the NDPS Act. It is further submitted that as per the disclosure statement of the co-accused, it was the present petitioner who had sold the said intoxicants tablets to the co-accused from whom the recovery has been effected. It is also submitted that in the said disclosure statement, the name of the petitioner has been specifically stated to be Vinod Kumar son of Hanuman resident of Kumharia which is the same as stated in the present petition and the argument raised by the petitioner to the effect that his name has been mentioned as Vinod resident of Bhoda Hoshanak is incorrect. It is also pointed out that in the disclosure statement, it has specifically been mentioned that the petitioner came riding on his motorcycle and delivered 10000 intoxicant tablets in a plastic bag to co-accused Bharat Singh @ Chanan and Mati Dass @ Popli and that mobile number of the petitioner is 7777003103. It is contended that in addition to the said disclosure statement, there are call detail records between the

petitioner on his abovesaid mobile number and Bharat Singh of the same day on which the alleged recovery has been effected and thus, it would be the present petitioner who would be the main accused who is indulging in the selling of intoxicant tablets and thus, his custodial interrogation is necessary. It is further contended that in case, the concession of anticipatory bail is granted to the petitioner then, the same would prejudice the case of the prosecution. It is argued that custodial interrogation of the petitioner is required for the purpose of finding out as to from where the present petitioner has been procuring the intoxicant tablets and also for the purpose of recovery of motorcycle used by him for supplying the recovered contraband.

This Court has heard the learned counsel for the parties and has perused the paper book.

It is not in dispute that the alleged recovery from the co-accused Bharat Singh @ Chanan and Mati Dass @ Popli falls under commercial quantity thus, attracting the bar under Section 37 of the NDPS Act. Learned State Counsel has handed over a copy of the disclosure statement of co-accused Bharat Singh @ Chanan, which is taken on record and the same is marked as Mark "A", as per which, it has specifically been stated by co-accused Bharat Singh that it is the present petitioner who had come on his motorcycle and had delivered 10000 intoxicant tablets to Bharat Singh @ Chanan and Mati Dass @ Popli. The telephone number of the petitioner has also been mentioned in the said disclosure statement and the said mobile number is 7777003103. In the said disclosure statement, the name of the petitioner has been specifically mentioned as Vinod Kumar son

of Hanuman, resident of Kumharia which is in consonance with the name and address mentioned in the present petition and the argument of the petitioner to the effect that his name has been mentioned as Vinod resident of Bhodha Hoshanak is contrary to what has been stated in the disclosure statement and thus, deserves to be rejected. Nothing has been averred in the petition so as to suggest that there was any personal enmity between the petitioner and the said Bharat who had made disclosure statement implicating the present petitioner in the case. In addition to the above, it is the stand of the State that there are call detail records showing that calls have been made between the petitioner and co-accused Bharat on the date when the recovery was effected and the FIR has been registered.

The Hon'ble Supreme Court of India in its latest judgment dated 19.07.2022 passed in Criminal Appeal Nos.1001-1002 of 2022, titled as "Narcotics Control Bureau Vs. Mohit Aggarwal", has set aside the order passed by the High Court of Delhi granting regular bail to the accused therein. In the said case, the High Court of Delhi had granted bail to the petitioner therein after the petitioner had been in custody for a period of 1 year and 3 months and after considering the fact that besides the confessional statements of co-accused recorded under Section 67 of the NDPS Act, no other incriminating material was forthcoming against the accused therein. The Hon'ble Supreme Court, after considering the provisions of Section 37 of the NDPS Act and also after taking into consideration the fact that there were CDR details of the mobile phones of all co-accused including the respondent therein showed that they were in touch with each other and also other factors, set aside the order granting bail

to the petitioner passed by the High Court of Delhi. The fact that there were CDR details of mobile phones between the accused persons was considered to be one of the incriminating circumstance against the respondent therein (accused) from whom no recovery had been effected and who was not arrested at the spot and was sought to be implicated solely on the basis of disclosure statement of the co-accused.

In the present case, the custodial interrogation of the petitioner is required for the purpose of ascertaining as to from whom the petitioner has procured the intoxicant tablets and also to recover the motorcycle used by him for supplying the said intoxicant tablets to the co-accused Bharat Singh @ Chanan and Mati Dass @ Popli.

Keeping in view the abovesaid facts and circumstances, this Court is of the opinion that the present petitioner does not deserve the concession of anticipatory bail.

Accordingly, the present petition is dismissed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

20.07.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No