

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

102

CRM-M-31016-2022

Date of decision: 20.07.2022

NIRWAIR SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present : Mr. Amarbir S. Shergill, Advocate
for Mr. Navjot Singh, Advocate
for the petitioner.

Mr. M.S.Nagra, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition, cast under Section 438 of Cr.P.C., seeks grant of anticipatory bail in case FIR No.102 of 11.05.2022, registered at Police Station City Samana, District Patiala, wherein offences constituted, under Sections 15/61/85 of the NDPS Act, 1985, are embodied.

2. At the crime site, from the alleged conscious, and, exclusive possession of the arrested principal offender, 30 Kgs of poppy husk, became recovered by the investigating officer, and, in respect thereof, seizure memo(s) became prepared.

3. However, during the course of the principal offender, being put to custodial interrogation, he disclosed that the seizure was purchased by him from the present bail petitioner, and, or, that the present bail petitioner was a supplier of the seized contraband.

Therefore, the present bail petitioner becomes amenable for his being tried, rather as a conspirator alongwith the principal arrested accused, in the trial, which may become entered into the learned Special Judge concerned.

4. Be that as it may, since the weight of the seizure, makes it fall within the ambit of non commercial quantity thereof, thereupon, the rigors of Section 37 of the NDPS Act are not applicable thereons. Consequently, he becomes entitled for becoming admitted to anticipatory bail. Moreover, when at this stage no evidence has been adduced by the prosecution, suggestive that in the event of the bail petitioner being enlarged on anticipatory bail, there is every likelihood of his fleeing from justice, and/or, tampering with prosecution evidence, thereupon too, it is not deemed fit to decline the relief of pre-arrest bail to the petitioner.

5. However, the learned State Counsel has vehemently opposed the application, on the ground, that the bail applicant-petitioner is a habitual offender, thereupon there is every likelihood of the bail applicant-petitioner abusing the facility of bail, as may become accorded to him. Nonetheless, the vigour of the afore made submission, of the learned State Counsel, before this Court, can become mitigated, by imposition of stringent conditions, upon the bail applicant-petitioner.

6. In aftermath, the present petition is allowed, and, the bail applicant-petitioner is admitted to anticipatory bail, and, in the event of his arrest, he may not be arrested by the investigating officer concerned. However, subject to the bail applicant-petitioner furnishing personal, and, surety bonds in the sum of Rs.50,000/- each, to the satisfaction of the

arresting officer. Furthermore, the bail applicant-petitioner shall also give an undertaking before the arresting officer, that as and when he is summoned through a written Hukamnama, he shall ensure his rendering his cooperation to the investigating officer.

7. In addition, in case, the bail applicant-petitioner re-indulges in criminal activities, thereupon, it is open to the investigating officer concerned to forthwith arrest the bail applicant-petitioner, and, thereafter to produce him before the learned Magistrate concerned, for the latter making an order for his being put to judicial custody.

8. The afore observations are meant only for the disposal of the present petition, and, shall not affect the merits of the trial arising from FIR (supra).

20.07.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*