

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

**CRM-M No.34924 of 2022
Date of Decision: 05.09.2022**

Himanshu

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Sant Lal Barwala, Advocate
for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

MEENAKSHI I. MEHTA, J.(Oral)

Apprehending his arrest in the criminal case arisen out of the FIR bearing No.404 dated 27.04.2022 registered at Police Station HTM, Hisar, under Sections 18(b), 21-B and 27-A of the NDPS Act, 1985 (here-in-after to be referred as 'the Act'), the petitioner has preferred this petition for seeking the relief of pre-arrest/anticipatory bail.

2. Shorn and short of unnecessary details, the allegations, as levelled against the petitioner in the present case, are that on 27.04.2022, on the receipt of a secret information, the police party raided at the disclosed place and apprehended his (petitioner's) co-accused Rajinder and

recovered the 'opium', weighing 62.74 grams, from his possession. During his interrogation, the above-named co-accused of the petitioner is stated to have suffered a disclosure statement specifically mentioning therein that the said contraband had been sold to him by the petitioner.

3. Status-report submitted on behalf of the respondent-State, by way of the affidavit of the Deputy Superintendent of Police, Head Quarter, Hisar, along-with Annexures R-1 and R-2 and the vernacular version of Annexure R-1, is already available on the file and these documents are taken on the record.

4. I have heard learned counsel for the petitioner as well as learned State counsel in the instant petition and have also perused the file carefully.

5. Learned counsel for the petitioner contends that no contraband has been recovered from the petitioner in this case and rather, he has been roped in as an accused solely on the basis of the disclosure statement as alleged to have been suffered by his afore-said co-accused and moreover, as per Annexure P-4, the copy of the discharge-summary of the petitioner, he had remained hospitalized on account of having suffered the fracture in his arm and in these circumstances, he deserves the relief as prayed for in this petition. To buttress his contentions, he places reliance upon the observations made by the Hon'ble Supreme Court in **Narcotics Control Bureau Vs. Mohit Aggarwal, 2022 LiveLaw (SC) 613.**

6. Per contra, learned State counsel argues that the investigating agency has obtained the Call Details of the mobile phone numbers of the

petitioner as well as of his above-named co-accused which reveal the exchange of phone calls between them prior to the date of the crime and in such circumstances, it becomes explicit that the petitioner has not been arraigned in the present case solely on the basis of the disclosure statement of his said co-accused.

7. Though the afore-said co-accused of the petitioner is alleged to have suffered the disclosure statement Annexure R-1 regarding his (petitioner's) involvement in the alleged crime but it is worth-while to mention here that Annexure R-2 (Colly) consists of the copies of the Customer Application Forms pertaining to the mobile-phone numbers of the petitioner and his said co-accused as well as of the Call Detail Record of these mobile phone numbers and it has categorically been mentioned in para No.6 of the status-report that as per the said call details, the petitioner and his co-accused had exchanged the phone calls thrice on 25.04.2022. Thus, it is explicit that the disclosure statement Annexure R-1 is not the sole basis for implicating the petitioner in the instant case.

8. The observations made by the Apex Court in **Mohit Aggarwal** (**supra**), do not come to the rescue of the petitioner because in the present case, the petitioner has sought the relief of pre-arrest bail whereas in the above-cited case, the appeal preferred against the order of the High Court granting the relief of '**post-arrest**' (regular) bail to the respondent-accused therein, had been allowed and the said order was quashed/set aside while observing that though the confessional statement, as made under Section 67 of the NDPS Act, could not be used against the accused but besides the

disclosure statement, the call detail record of the respondent and his co-accused was also available. These observations, rather, support the version of the prosecution because as mentioned earlier, it has specifically been deposed in para No.6 of the status-report that as per the call detail record of the mobile phone numbers of the petitioner and his co-accused, they were in touch with each other before the alleged commission of the offence in this case.

9. To add to it, in a recent judgment as handed down in **State of Haryana Vs Samarth Kumar 2022(3) RCR(Criminal) 991**, Hon'ble the Supreme Court allowed the appeals and set aside the orders whereby the High Court, while relying upon the verdict as rendered in **Toofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1**, had extended the relief of pre-arrest bail to the respondents-accused on the grounds that no recovery had been effected from them and they were implicated only on the basis of the disclosure statement of the main accused and has, rather, categorically held that the decision rendered in **Toofan Singh (Supra)**, would not be of any avail to the respondents for seeking the relief of pre-arrest bail.

10. As regards Annexure P-4, a perusal thereof reveals that the petitioner is reported therein to have remained hospitalized during the period from 07.04.2022 till 11.04.2022 whereas the instant FIR has been registered on 27.04.2022, i.e subsequent to the afore-referred period. Moreover, in para No.8 of the status-report, it has also been specifically deposed that besides the present case, the petitioner is involved in three more criminal cases, including one case under the NDPS Act.

11. Keeping in view the above-discussed facts and circumstances as well as the gravity of the offence as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the relief of pre-arrest/anticipatory bail. Resultantly, the petition in hand stands dismissed accordingly.

September 05, 2022
pooja

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>