

CRM-M-39771-2021 (O&M)

THROUGH VIDEO CONFERENCE
215

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

Decided on: January 25, 2022.

(1) CRM-M-39771-2021 (O&M)

Sumit Dahiya

.. Petitioner

VERSUS

State of Haryana and others

.. Respondents

*** * ***

(2) CRM-M-53366-2021 (O&M)

Sumit Dahiya

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

PRESENT

**Mr.Pankaj Kaushik, Advocate,
for the petitioner in both the petitions.**

Ms.Tanushree Gupta, DAG, Haryana.

CRM-M-39771-2021 (O&M)

JASGURPREET SINGH PURI, J. (ORAL)

This order will dispose of the above noted two petitions i.e. CRM-M-39771-2021 filed by the petitioner seeking directions to police officials that they should not raid the house of the petitioner without any warrant as well as CRM-M-53366-2021 filed seeking grant of anticipatory bail to the petitioner in case FIR No.66 dated 22.3.2021, under Section 21 (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Farakpur, District Yamuna Nagar.

CRM-M-39771-2021

On 23.9.2021, this Court had issued notice of motion on the basis of submissions made by the learned counsel for the petitioner that in one case, he has been nominated on the basis of disclosure statement and for last few months, the Narcotics Department is repeatedly coming to the house of the petitioner for the purpose of extracting money from him and his elderly mother who lives with him and that since the petitioner is ready and willing to cooperate with the investigating agency, the police cannot exceed its jurisdiction for ulterior motive by violating the guidelines issued by the Hon'ble Supreme Court repeatedly. This Court had directed the Superintendent of Police, Yamuna Nagar – respondent No.2 to file his own affidavit.

Learned State counsel has submitted that a detailed reply dated 10.11.2021 by way of affidavit of the Superintendent of Police, Yamuna Nagar, has been filed and while referring to the said affidavit, she has submitted that on 22.3.2021, a secret information was received by the

CRM-M-39771-2021 (O&M)

police with regard to the drugs smuggling which was being carried out and a raid was made in this regard on the basis of information given by the secret informer and the vehicle was stopped near a boy who was standing near agriculture field and it was informed that said boy is Mohit. Thereafter, the aforesaid boy was apprehended and on asking he told his name as Mohit son of Anil Kumar. Thereafter, a notice under Section 50 of the NDPS Act was issued to him and search was conducted in the presence of gazetted officer and from his bag narcotic was found in the aforesaid plastic envelop which had brown colour and as per experience it was found to be smack. The weight of the same was found to be 5 gram 30 milli gram. The aforesaid Mohit was arrested and he disclosed that he was addicted to smack and that about 3-4 days ago, he took 8 gram smack from Sumit Dahiya (petitioner), out of which he used some smack himself and rest was sold by him. On the basis of aforesaid disclosure statement, the police had gone for search of the house of petitioner and also raided in search of another accused namely Amit Kumar alias Chotu who was residing in the house of petitioner as tenant and he was wanted in another case under the NDPS Act. The petitioner, however, absconded.

Learned State counsel has further submitted that FIR No. 66, dated 22-03-2021, under Section 21/61/85 of the NDPS Act, has been registered against the petitioner and he is wanted in the present case and due to said reason his house was being raided but the petitioner had always absconded and never cooperated with the police. She further submitted that the allegations leveled by the petitioner were totally baseless allegations in

CRM-M-39771-2021 (O&M)

order to create pressure as the petitioner is involved in sale of narcotics as per the investigation conducted so far in the aforesaid case against him. She further submitted that so far as representation (Annexure P-1) given by the petitioner is concerned, the same was marked to the Deputy Superintendent of Police, Yamuna Nagar for enquiry who called the petitioner to come and explain his grievances and a message was also got delivered at his house but he did not turn up despite calls and messages. However, after inquiry on the representation of petitioner, it was found that petitioner is wanted in aforesaid FIR No. 66 dated 22.03.2021 and in search of petitioner, the investigating officer along with other police officials went to the house of petitioner but he was not found and to avoid his arrest, he has hidden himself.

Learned State counsel has further submitted that the present petition seeking directions is without any merit in view of the fact that the petitioner is wanted in an FIR registered against him under the NDPS Act, and the police is discharging its duty for the purpose of apprehending the petitioner but he had been absconding since March 2021 and instead of cooperating with the investigation process, the petitioner has filed the present petition on false grounds.

CRM-M-53366-2021

In the present case, the petitioner has prayed for the grant of anticipatory bail on the ground that the petitioner has been nominated on the basis of disclosure statement and when notice of motion was issued by this Court on 10.1.2022 and interim protection was granted to the petitioner,

CRM-M-39771-2021 (O&M)

the learned Counsel for the petitioner had submitted before this Court that there is no other case against the petitioner under the NDPS Act and he has clean antecedents. Learned counsel for the petitioner has submitted that the petitioner has joined the investigation and therefore, he may be granted the relief of anticipatory bail.

Learned State counsel by referring to the affidavit filed by the State in the present petition especially para 6 of the affidavit, has submitted that despite directions having been issued by this Court for granting interim protection, the petitioner did not join investigation process and therefore, the petitioner has no regard even for the orders passed by this Court. She submitted that despite having clear directions, the petitioner has not joined the investigation and has not cooperated with the investigation agency and the investigation officer had issued notices to the petitioner to join the investigation but he did not do so. She further submitted that now she has obtained instructions from ASI Dilbagh Singh that after filing of the aforesaid affidavit, the petitioner has since joined investigation but he has not cooperated with the investigation process and he has not disclosed the source of smack which he had given to other co-accused namely Mohit. She further submitted that custodial investigation of the petitioner was required in view of the fact that the petitioner has not cooperated with the investigation process and for the purpose of elicitation of truth, his custodial investigation was required in order to ascertain the source from where the petitioner has got the smack although which was not large quantity but chain of supply has to be determined so as to break the chain.

CRM-M-39771-2021 (O&M)

Learned State counsel while further referring to para 7 of the affidavit has submitted that petitioner is also involved in three other cases out of which two pertain to Sections 148, 149 323, 324, 325, 341 and 506 IPC and the third one pertains to Section 4 of the POCSO Act and Section 506 IPC. However, so far as case under the POCSO Act, is concerned, the petitioner has since been acquitted while other two cases are still pending. She further pointed out that the petitioner has not disclosed these facts at the time of filing of the present petition and she has referred to para 17 of the petition filed by the petitioner wherein he has submitted that he is not involved in any other case/FIR nor till date the petitioner has been declared proclaimed offender in any other case and therefore, the petitioner has concealed the material facts from this Court. She submitted that the conduct of the petitioner itself would dis-entitled the petitioner for the grant of concession of anticipatory bail firstly on the ground that despite repeated messages/notices sent to him for cooperating with the investigation process, he did not cooperate with the investigation process nor did he respond to the messages and was rather absconding from his house since March 2021 which is almost 9 months and secondly, thereafter, while filing the present petition for the grant of anticipatory bail, he has concealed and suppressed the material facts from this Court by not disclosing the fact that earlier he was involved in three more cases although in one of the case under the POCSO Act, he has been acquitted and therefore, she has opposed the grant of anticipatory bail to the petitioner.

I have heard the learned counsel for the parties.

CRM-M-39771-2021 (O&M)

So far as CRM-M-39771-2021 seeking direction to the State is concerned, the State has filed an affidavit in which it has been elaborately explained that an FIR has been registered against the petitioner in March 2021 and for the purpose, the house of the petitioner was being raided and therefore, the police has been discharging its obligation in accordance with law and as such, no ground is made out for issuance of any directions to the police in this regard. The submissions made by the learned State counsel relying upon the affidavit filed by the State has merits. Once an FIR has been registered against the petitioner way-back in March 2021, the police was within its right to have discharged its duties in case presence of petitioner is required for the purpose of ascertaining the truth. Therefore, in view of the affidavit filed by the State, no ground is made out for interference in the present petition and the present petition being devoid of any merits is, hereby, dismissed.

So far as second petition CRM-M-53366-2021 for the grant of anticipatory bail is concerned, earlier when the interim protection was granted by this Court vide order dated 10.1.2022, the petitioner failed to join the investigation despite the orders passed by this Court and thereafter, only once i.e. on 22.1.2022, as per the learned State counsel as well as the affidavit filed by the State the petitioner joined the investigation but he has not cooperated in the investigation process and has also not disclosed the source of narcotics. The arguments raised by the learned counsel for the petitioner that his name was nominated purely on the basis of disclosure statement and for that reason, he should be granted the

CRM-M-39771-2021 (O&M)

concession of anticipatory bail, is again without any substance. Although the disclosure statement per se was not admissible in evidence in the facts and circumstances of the present case but the conduct and antecedents of the petitioner is also to be seen. It is the case of the State that despite being called number of times from March 2021 and despite the fact that his house was being raided by the police, the petitioner was absconding coupled with the fact that the petitioner has concealed and suppressed material facts from this Hon'ble Court while filing the present petition would dis-entitle the petitioner for grant of anticipatory bail. In para 17 of the petition, the petitioner has specifically stated that he is not involved in any other case/FIR till date and the present petition is supported by the affidavit of the petitioner which is at page no.8 of paper book. However, in the affidavit filed by the State, as stated above, it has been mentioned that the petitioner is involved in three other cases although out of those 3 cases, he has been acquitted in one case. The petitioner was duty bound not to suppress any material fact from this Court especially when he has specifically stated in para 17 of the petition that he is not involved in any other case/FIR and the petition is supported by his affidavit.

Therefore, considering the aforesaid facts and circumstances of the present case, this Court does not deem it fit and proper to grant the concession of anticipatory bail to the petitioner and consequently, the present petition for the grant of anticipatory bail to the petitioner is, hereby, dismissed.

Accordingly, both the petitions stand dismissed.

CRM-M-39771-2021 (O&M)

However, it is made clear that aforesaid observations of this Court are only for the purpose of deciding the present petitions and will not in any manner whatsoever reflect on the merits of the case.

January 25, 2022.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No