

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

**CRM-M-44695-2022
Date of Decision 27-09-2022**

NEERAJ

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM : HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present : Mr. Rakesh Nehra, Senior Advocate with
Mr. Atul Ravish, Advocate and
Mr. Gourav Jain, Advocate, for the petitioner

Mr. Surender Singh, AAG, Haryana

SANDEEP MOUDGIL, J

Prayer in the present petition for grant of anticipatory bail to the petitioner in FIR No 808 dated 12-08-2022 registered under section 22C/27A of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Barwala, District Hisar.

Learned counsel for the petitioner has submitted that in the present case, no recovery has been effected from the present petitioner and he has been implicated solely on the basis of the disclosure statement of the co-accused Ramniwas from whom the recovery of 2350 tablets of Tramadole has been allegedly effected, which is of commercial quantity.

Learned counsel has further submitted that Ramniwas @ Chamkor, Kuldeep, and another co-accused have in their disclosure statement stated that they had purchased the Intoxicant tablets from the petitioner.

Learned Counsel for petitioner has further stated that if a person has been proceeded against only on the basis of disclosure statement of co-accused and also no recovery has been effected from the petitioner, then he should be granted the benefit of anticipatory bail and statement made by co-accused before the police is inadmissible evidence.

Notice of motion.

On the asking of the court, Mr. Surender Singh, AAG, Haryana, accepts notice on behalf of the State and opposed the prayer made in the present petition submitting that the present petition is the second anticipatory bail application of the petitioner on the ground that petitioner is involved in the crime as disclosed by his co-accused and recovery in the case is of commercial quantity of 2350 tablets of tramadol. Further, there is no change of circumstance in the present petition, as petitioner had withdrawn his first bail application bearing CRM-M-41500-2022 on 12.09.2022. The co-accused have named the petitioner.

Heard learned counsel for the parties and perused case file.

According to the judgment passed by a Co-ordinate Bench of this Court in **Amit Khurana versus State of Haryana, decided on 21-12-2021, reported as 2022(1) Law Herald 49**, even though no recovery is from the petitioner's possession, he will also be responsible for supplying the seizure to co-accused. The relevant paras 16 to 19 read as under:-

“16. Consequently, even if the bail applicant, did not ensure, at his instance, the recovery of the alleged seized psychotropic substance, and even when the seizure occurred from Anuj, yet with the bail applicant purportedly unlawfully supplying the seizure to Anuj, he hence becomes prima-facie penally liable alongwith one Anuj. As such, upon the confession

as made by Anuj, from whose conscious and exclusive possession, the incriminatory fact (supra), became discovered or recovered, at the site of occurrence, the applicant rather also becomes enjoined to become connected to or is to be linked to afore discovered fact, whereupon it would become admissible in evidence, and, also can become 'may be proved', during the course of opening of trial against all accused concerned.

17. Be that as it may, the evidentiary strength of the afore discovered fact, vis-a-vis the bail applicant, is to tested, and, as unless it holds some prima- facie evidentiary value, it would unnecessarily hamper and fetter the personal liberty of the bail applicant. In other words, the disclosure statement, is to be accompanied by further corroborative evidence, comprised in the unexplained for hence lawful purposes, the inter-se mobile conversations between Anuj (supra), as exist in the respective call detail records, of the accused concerned, and, the afore is also to be gathered by the investigating officer concerned. Furthermore, the bank records concerned, are also be ascertained, to determine the manner of transfer of funds, as occurred from one accused to the other. In addition the stock registers concerned, are to be thoroughly examined, for unearthing the factum whether the supplied psychotropic substance occurred unauthorizedly from one accused to the other, inasmuch as, the supplies occurring, without any corresponding entries, through the prescription slips becoming entered in the stocks/ledgers, as, maintained by the chemist/druggist concerned.

18. However, at this stage, though the afore evidence, may not exist on record, and may be the non-existence of apposite incriminatory evidence (supra), may arise from hereafter assigned reasons. Nonetheless, since the seizure is of a commercial weight, and, since the bail applicant, became arrested on 26.05.2021, yet with his from 28.05.2021 hence

prima-facie availing the facility of interim bail on health grounds, and, hence his not facilitating the gathering at his instance, of the afore evidence, for enabling the erection of a firm conclusion, that whether the disclosure statement (*supra*), is a bald one or is linked with other incriminatory evidence, of immense evidentiary vigor. Moreover, the afore prolonged availing of facility of bail on health grounds, by the bail applicant, cannot *prima-facie* at this stage, give any leverage to him to contend, that the afore connecting him evidence with the disclosure statement of Anuj, has not surfaced nor is available with the investigating officer concerned, significantly since he has for reasons (*supra*), not rendered the requisite co-operation to the investigating officer concerned. Moreover, even if he could not render the requisite co-operation to the investigating officer concerned, and, if hence the investigating officer concerned, became precluded to marshal the relevant incriminatory link evidence against the bail applicant, yet the latter could *suo motu* place on record the apposite call details, all the relevant bank transactions besides all the relevant abstracts of the stock registers, as maintained by him, hence in personification of his *prima-facie* innocence. The bail applicant has not re-coursed the afore endeavour. Consequently, this Court does, in view of the weight of the seizure hence, rather recourse the mandate of Section 37 of the NDPS Act, and, deems it fit to not grant the indulgence of bail to the bail applicant.

19. This Court does deprecate the indolence, and, lethargy of the investigating officer, to omit prior to the filing of the report under Section 173 Cr.P.C., 1973 and, rather during the phase of investigations, hence marshal the afore incriminatory evidence. Even though, the afore failings of the investigating officer *prima-facie* appear to become generated from the bail applicant availing the facility of interim bail on health grounds. However, the mere non-collection of the afore

evidence, does not per-se entitle the bail applicant to bail, as hereafter also it is yet open to the investigating officer concerned, to re-course the mandate of Section 67 of the NDPS Act, vis-a-vis service providers concerned, and, also qua the management of the commercial establishments concerned besides qua the bank concerned. However, the afore can be done only in accordance with law, and, with the leave of the Court concerned. Therefore, when still the afore re-coursings can be done with the leave of the Court, as such it cannot be hence said that the disclosure statement as made by the accused, is a bald one, and, that the bail applicant is not connected with the discovered fact, and, nor further that the fact concerned, 'may not become proved'.

In the light of the afore-said discussions and the facts on record, this Court does not find any merit in the present petition and is fully convinced that the custodial interrogation of the petitioner is necessary to move the investigation further in the case.

Accordingly, the present anticipatory bail application lacks merits and stands dismissed.

DATE: 27-09-2022

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(SANDEEP MOUDGIL)

JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*