

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-501-2022 (O&M)
Date of Decision: 19.01.2022

Mohammad Yaseen

....Petitioner(s)

Versus

Union of India

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. K.S Kahlon, Advocate, for the petitioner(s).

Ms. Gurmeeet Kaur Gill, Senior Panel Counsel,
for Union of India.

Through Video Conferencing

JASGURPREET SINGH PURI, J.(Oral)

The present petition been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in Complaint/Crime NCB No.53/2021 dated 22.08.2021, under Sections 8, 20, 25, 27-A, 29 and 60 of NDPS Act, 1985, registered at Police Station Taragarh, Pathankot, District Pathankot, Narcotic Control Bureau, Amritsar.

The present complaint came to be lodged by the Narcotics Control Bureau, Amritsar on the ground that on 21.08.2021 the Narcotics Control Bureau received an information that one person namely Yaseen who is the present petitioner and is residing in Chamba area has sent two persons namely, Nazeer Mohammad and Rafi alongwith about 25 Kg. of Charas in a blue colour canter to further hand over the same consignment to one Rahul Uppal, resident of Jawahar Nagar, District Amritsar near Verka Chowk in

Amritsar area and on the basis of this information the First Information Report was submitted to the Zonal Director, Narcotic Control Bureau, Chandigarh.

The learned counsel for the petitioner has submitted that no recovery was made from the petitioner and it was allegedly made from the two persons namely, Naseer and Rafi and the name of the petitioner was nominated on the basis of the disclosure statement made by them which was not admissible in evidence and, therefore, he may be considered for the grant of anticipatory bail. He further submitted that the present complaint came to be lodged on the basis of the complaint made by uncle of the aforesaid Rahul Uppal with whom the petitioner had business dealings earlier and since the relation had turned sour, the petitioner was falsely implicated in the present case.

On the other hand, Ms. Gurmeet Kaur Gill, learned Senior Panel Counsel, for Union of India has submitted that a status report has been filed by way of affidavit of Intelligence Officer, NCB, Amritsar. The status report is directed to be taken on record.

While referring to the aforesaid status report, learned State counsel submitted that on 21.08.2021 at about 22:15 hours one person namely Yaseen (Petitioner) has sent two persons namely, Nazeer Mohammad and Rafi alongwith 25 Kg. of Charas in a blue colour canter to deliver the same to Rahul Uppal and a copy of the information report has been annexed as Annexure R-1 and thereafter, the preventive team of NCB reached Ladpalwan Toll Plaza, Pathankot situated on Pathankot-Amritsar road at about 2.30 hours on 22.08.2021 and also associated two independent witnesses and mounted a surveillance at the Toll Plaza and kept on

checking the vehicles coming from Pathankot towards Amritsar side. After some time a blue colour canter bearing registration No.HP-73-1465 was intercepted by the NCB team at the Toll Plaza on 22.08.2021 and during the search of the vehicle a recovery of 24.5 Kg. of Charas from four packets was made from the said blue colour canter from the conscious possession of accused Nazeer Mohammad and Mohammad Rafi. Thereafter, both the accused made a voluntary statement under Section 67 of the NDPS Act wherein they admitted the manner and factum of the above said recovery and disclosed that it is present petitioner namely Mohammad Yaseen who is into the business of smuggling of Charas and on 21.08.2021 he gave them four bags containing 24.5 Kgs. of Charas and as per his instructions, the same was to be delivered to Rahul Uppal and the petitioner had promised to given Rs. 30,000/- to both Nazeer Mohammad and Mohammad Rafi in lieu of delivering the Charas and both the aforesaid accused have provided the mobile number of the present petitioner and also identified his photograph. Thereafter, the NCB team also raided the house of the present petitioner on 22.08.2021 but he was not found there and, therefore, notice under Section 67 of the NDPS Act was served to his wife on 22.08.2021 but he did not join the investigation. Thereafter, three notices dated 26.08.2021, 30.09.2021 and 12.10.2021 were issued to the present petitioner for joining investigation but he did not join the investigation and deliberately avoided to join the investigation and thereafter, non-bailable warrants were issued against the petitioner by the Special Judge, NDPS Act, Pathankot for 10.12.2021.

The learned State counsel further submitted that the petitioner has been specifically named in the FIR on 21.08.2021 and whatever

information was reduced in the form of writing, the same has actually happened that two persons were apprehended alongwith 24.5 Kgs. of Charas and, therefore, the argument raised by the learned counsel for the petitioner that he has been nominated purely on the basis of disclosure statement is not sustainable. She further submitted that the information with regard to the petitioner was already received by the Bureau on 21.08.2021 and a nakka was laid down on the Amritsar-Pathankot Highway and the other two persons were apprehended. She further submitted that the present petition has been filed for the grant of anticipatory bail and in fact three notices were issued to the petitioner for joining investigation but since he failed to join the investigation, non-bailable warrants have now been issued by the Special Judge, Pathankot. She further submitted that the aforesaid confiscated quantity of Charas falls within the commercial quantity as per the NDPS Act and, therefore, present bail application is not maintainable in view of the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The present petition has been filed seeking anticipatory bail. The arguments raised by the learned counsel for the petitioner that the name of the petitioner has been nominated purely on the basis of the disclosure statement and, therefore, he should be considered for the grant of anticipatory bail are not sustainable in view of the fact that as per the aforesaid facts, the name of the petitioner finds mentioned in the First Information Report Annexure R-1 whereby on the basis of secret information it was informed to the NCB that the petitioner had sent 25 Kgs. of Charas through two persons. This Annexure R-1 which is stated to be First Information Report is of 21.08.2021 and thereafter, on 22.08.2021 the

nakka was laid down and two persons were apprehended who thereafter disclosed the name of the petitioner as well. Therefore, it cannot be said that the name of the petitioner has come to light only on the basis of the disclosure statement. The confiscated quantity according to the learned counsel for the parties is about 25 Kgs. of Charas and the same being a commercial quantity, the claim of the petitioner for the grant of anticipatory bail would be hit by the bar contained under Section 37 of the NDPS Act. Furthermore, as per the affidavit filed by the State, the petitioner was called thrice and was issued notice for joining investigation but he did not do so and, therefore, non-bailable warrants have been issued by the Special Judge, Pathankot would also disentitle the petitioner for the grant of anticipatory bail.

Consequently, finding no merit in the present petition, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

19.01.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No