

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

CRM-M-51745-2022
Date of decision : 11.11.2022

Vikram @ Pahari

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Amit Choudahry, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.317 dated 15.10.2022 registered under Sections 21(b) and 27(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Ratia, District Fatehabad.

Notice of motion.

On the asking of the Court, Mr. Munish Sharma, Asstt. A.G., Haryana, who is present in the Court, accepts notice on behalf of the respondent-State.

Learned Counsel for the petitioner has argued that the petitioner was not arrested on the spot and no recovery was effected from the petitioner. The petitioner has been falsely implicated in the case on the basis of disclosure statement allegedly made by co-accused Kamal Kumar. Apart from the disclosure statement, there is no evidence regarding involvement of the petitioner in the case. Even otherwise the contraband

recovered from co-accused Kamal Kumar falls under the category of non-commercial quantity, therefore, the rigors of Section 37 of the NDPS Act are not applicable in the present case. Nothing is to be recovered from the possession of the petitioner and therefore, his custodial interrogation is not required. The petitioner is already ready and willing to join the investigation.

On the other hand, learned State counsel opposes the present petition and contends that on 15.10.2022, when police party headed by ASI Roshan Lal was present at Nakabandi on Village Bharpur Mod, they saw 02 young boys coming on the motor-cycle from the side of Fatehabad. On seeing the police party, they tried to turn their motor-cycle. The police party apprehended the accused Vijay Kumar and Kamal Kumar and on search 50.66 grams heroin was recovered from Kamal Kumar, pillion rider on the motorcycle. During investigation, accused Kamal Kumar made a disclosure statement that he had purchased the alleged contraband from Vikram @ Pahari (the petitioner) for Rs.45,000/-.

Learned State counsel further contends that the petitioner is a habitual offender and he is also involved in 02 other cases under the NDPS Act i.e. FIR No.104 dated 14.06.2022 and FIR No.291 dated 27.05.2022. The custodial interrogation of the petitioner is required for thorough investigation of the case.

Having heard learned counsel for the parties, I am of the view that the allegation against the petitioner is serious in nature. The contraband is alleged to have been purchased from the petitioner. Moreover, his antecedents are also not good as he is already involved in two other cases also. It has been observed by the Hon'ble Supreme Court in case

(1978) 1 SCC 240 that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. Moreover, Investigation is still going on. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. This view of mine finds support from the judgment of Hon'ble Supreme Court in **Madhya Pradesh Vs. Pradeep Sharma, (2014) 2 SCC 171.**

In view of the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

11.11.2022

MFK

(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No