

CRM-M-2375-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2375-2023
Reserved on: 27.04.2023
Pronounced on: 17.05.2023

Pradeep Kumar Gupta ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikas Gulia, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
200	05.07.2021	City Thanesar, District Kurukshetra (Haryana)	20 & 29 of NDPS Act (Section 29 added later on)

1. The petitioner apprehending arrest in the FIR captioned above, on the allegations of dealing in 278 kg of ganja, which is approximately 14 times more than base level of commercial quantity, had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide a detailed order dated 24-01-2023 passed by this Court, the petitioner was granted interim protection, which is continuing till date.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. The petitioner’s counsel argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State’s counsel opposes the bail.

REASONING:

5. It shall be appropriate to refer to para 5 of the status report filed by the concerned DySP, which reads as follows:

“(5). That during investigation of the present case the co-accused, namely, Rulia Ram himself admitted his crime and police also taken the CDR of mobile phone of co-accused namely Rulia Ram and other accused person and status the calls between the accused. The copy of CDR is

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enclosed herewith as Annexure R-6 for kind perusal of this Hon'ble Court and details of calls between present petitioner/accused and co-accused is given as under for kind perusal of this Hon'ble Court.

(i). The mobile no.9034953560 used by co-accused Rulia Ram and mobile no.8766323715 used by present petitioner/accused and they have talking on above said mobile numbers as mentioned below:

On dated 03.06.2021 talking 6 times and on 07.03.2021 talking 2 times."

6. Despite rigorous interrogation, the Investigator could not get any evidence to connect or link the above mentioned mobile numbers to the petitioner. There was no evidence of the petitioner talking to his family members from this number. Further investigation is continuing to rule out that whether the petitioner had also given decoy to his family members or not. However, at this stage, the evidence collected against the petitioner is not sufficient to invite the rigors of section 37 of NDPS Act or to deny him bail. There would be no justification to keep this bail pending waiting for the proper investigation. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had hampered the investigation, or despite being called to join the investigation, he did not appear before the investigator. Given the above, there would be no justification to discontinue the interim protection granted vide order dated 24.01.2023, and the same is made absolute **subject to the petitioner complying with the terms of the bail order specifically condition number 13, and the petitioner is directed to keep the power of his smart mobile phone properly charged, keep its validity and value properly re-charged, and always keep the said mobile phone with him. If he fails to violate this condition, then it shall be permissible even to the Sessions Court to cancel his bail. The Investigator/SHI are directed to apply for cancellation of bail before Sessions Court in case of the violation of this condition or any other condition mentioned in the interim orders.**

7. The conditions mentioned above imposed by this court are as per the concession dated 14-02-2023 by the petitioner through his counsel, and also to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they

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seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed.”

Petition allowed in previously mentioned terms in the order dated 24.01.2023.
Interim order dated 24.01.2023 is made absolute subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

17.05.2023
anju rani

Whether speaking/reasoned:	Yes
Whether reportable:	No.