

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

105

CRM-M-5605-2023
Date of decision : 07.02.2023

Avtar Singh

....Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Rubal Garg, Advocate for the petitioner.

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.85 dated 02.11.2020 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (to which Section 29 of the NDPS Act was added later on) at Police Station Sadiq, Faridkot.

Brief facts of the case are that on 02.11.2020 the police apprehended accused Amandeep Singh @ Amna and Kuldeep Singh while carrying a plastic bag in between them on the motorcycle bearing registration No.PB-04Y-3905 and on search heavy recovery of 15000 intoxicating tablets of Tramadol Hydrochloride 100 mg was effected from the said bag. During investigation, on the basis of disclosure statement of accused-Amandeep Singh @ Amna, 2500 intoxicating tablets were recovered from the trolly bearing registration No.RJ-13-GB-0775 which was belonged to the petitioner.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The petitioner

was not named in the FIR and was nominated by the police after a gap of almost 02 years. The alleged trola is registered in the name of the petitioner but due to accident, he was unable to ply the said trola and the same was given by him to his son co-accused Amandeep Singh @ Aman to manage and ply the same. There is no evidence against the petitioner to connect him with the alleged commission of offence. The petitioner is not involved in any other case. Nothing is to be recovered from the petitioner and his custodial interrogation is not require in the case. The petitioner is also ready and willing to join investigation. Therefore, the petitioner may be granted anticipatory bail.

Notice of motion.

On the asking of the Court, Mr. Joginder Pal Ratra, Senior D.A.G., Punjab, who is present in the Court, accepts notice on behalf of the respondent-State. Learned State counsel has vehemently opposed the present petition and submits that the recovery effected from co-accused Amandeep Singh @ Amna and Kuldeep Singh falls under the category of commercial quantity and on his disclosure statement 2500 intoxicating tablets were recovered from the trola which was belonged to the petitioner. For thorough investigation of the case, the custodial interrogation of the petitioner is required in the case.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The quantity of contraband recovered from co-accused Amandeep Singh @ Amna and Kuldeep Singh falls under the category of commercial quantity which attracts rigors of Section 37(1)(b) of the NDPS Act. Furthermore, investigation is still going on in the present

case and huge quantity of contraband is claimed to have been recovered in this case. For thorough investigation of the case, custodial interrogation of the petitioner is necessary. 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. The Hon'ble Supreme Court in ***State Vs. Anil Sharma : (1997) 7 SCC 187*** held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

07.02.2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No