

CRM-M-6139-2023

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-6139-2023
Date of Decision: 12.04.2023

Bajrang

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Jainainder Saini, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

HARSH BUNGER J. (ORAL)

Petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.194, dated 12.08.2022, under Sections 15(b) and 27-A (added later on) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “NDPS” Act), at Police Station Sadar Tohana, District Fatehabad.

Upon issuance of notice in this case, the status report by way of affidavit of Mr. Jugal Kishor, HPS, Deputy Superintendent of Police, District Fatehabad (Haryana) has been filed on behalf of State of Haryana.

Brief facts of the case are that the abovesaid FIR was registered

on the complaint of ASI Roshan Lal HSNCB Unit, Fatehabad, District Fatehabad, wherein it was stated that 12.08.2022, he along with his fellow employees were passing through the outskirts of village-Pirthala near Shiv Mandir on Government Vehicle bearing No. HR-05-GV-1183, when one person holding white colored plastic bag in his hand, came outside in the street from his house and upon seeing the police vehicle, suddenly turned back and tried to enter his house; however, he was apprehended by the complainant with the help of fellow officials. Upon inquiry, the said person disclosed his name as Hetram s/o Kashi Ram, resident of Pirthala, District Fatehabad. Being suspicious, that the said person was carrying a narcotic substance in the white colored plastic bag, the complainant served a notice under Section 50 of the NDPS Act upon Hetram and apprised him of his legal rights whereupon, Hetram got recorded his reply that he wanted get his search and search of the white colored plastic bag conducted in the presence of the Gazetted Officer who should be called at the spot. Accordingly, Dr. Jony, Veterinary Doctor, Nagla was called at the spot. Attempt was made to associate persons from general public, however, everybody expressed their inability. Thereafter, upon the instructions of Dr. Jony, the complainant conducted search of white colored plastic bag and poppy husk was found therein. Upon weighing the said white colored plastic bag, containing poppy husk, the same was found to be 7 Kgs and 400 grams. Accordingly, parcel of the recovered contraband was prepared. Upon inquiry, the accused Hetram disclosed that the recovered contraband was supplied to him by Bajrang (present petitioner). Seizure memos were prepared and the abovesaid FIR was registered at Police Station Sadar, Tohana, District Fatehabad against

Hetram and Bajrang (petitioner).

Apprehending his arrest in this case, the petitioner approached the Court of Additional Sessions Judge, Fatehabad seeking grant of pre-arrest bail by filing an application, however, the same was declined by the learned Additional Sessions Judge, Fatehabad vide order dated 23.12.2022. Accordingly, the petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail.

Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case and he has no concern with the alleged crime and neither any recovery was effected from him as he was not present at the spot. It is submitted that the petitioner has been nominated as an accused on the basis of the disclosure statement of the co-accused Hetram which is not admissible in the evidence. It is further submitted that the alleged recovered poppy husk is 7Kgs and 400 grams, which falls under the category of non-commercial quantity, accordingly, the rigors of Section 37 of the NDPS Act are not attracted. Learned counsel for the petitioner submits that the petitioner is ready to join the investigation and to comply with other conditions as may be imposed by this Court or the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on account of seriousness of the offence. Learned State counsel while referring to the status report has submitted that as per the disclosure statement of Hetram, it is the present petitioner (Bajrang) who sold 7 Kgs and 400 grams of poppy husk for Rs. 28,000/- to him at his home (Village-Pirthala). The disclosure statement of

Hetram reads as under:

“In the presence of following witnesses accused Hetram son of Kashi Ram son of Magla Ram resident of Pirthala District Fatehabad without any fear, pressure, coercion and without any allurements got recorded his statement that I am patient of Cancer. I am not blessed with any son and I have five daughters. I am unable to do any work. Due to that reason I used to do smuggling of poppy husk to meet expenses of my medicine and to meet out the expenses of my house. Yesterday morning Bajrang son of Om Parkash, resident of Bhana District Hisar gave 7 kg 400 grams of poppy husk for Rs. 28,000 at our home. In order to sell the poppy husk in Bhuna, in yesterday noon I came out from my main gate of the house in the street, then police apprehended me with the plastic bag carrying 7 kg 400 grams of poppy husk. While accompanying with you I can demarcate that place where yesterday morning Bajrang son of Om Parkash, resident of Bhana District Hisar sold plastic bag containing 7 kg 400 grams of poppy husk for Rs. 28,000/-.”

Learned State counsel has submitted that on 02.02.2023, even the FSL report has been received in this case, wherein poppy straw has been found in the sample. It is further submitted that the petitioner is the drug peddler and he is involved in many other cases out of which two cases are under the NDPS Act. In this regard, he has referred to para 10 of the status report, which reads as under:

“10. That it is respectfully submitted that the present petitioner is drug peddler. As per record, the present petitioner has remained involved in 3 other FIRS in which 2 FIRS are under NDPS Act, 1985. Detail of other cases is given below:
i. FIR. No. 83 dated 29.09.2020 u/s 15(b), 27-A, 61, 85 N.D.P.S. Act, 1985 registered at Police Station Sadar Fatehabad, District Fatehabad (Haryana). In that FIR., recovery of 1 kilogram 100

grams of poppy husk was effected from the conscious possession of present petitioner. In that case, petitioner is on regular bail.

ii. F.I.R. No. 168 dated 13.07.2022 u/s 15(b) N.D.P.S. Act, 1985 registered at Police Station Sadar Tohana, District Fatehabad (Haryana). In that case, on 06.02.2023, the cor- ordinate bench of this Hon'ble Court granted interim anticipatory bail (CRM-M-6181-2023) to petitioner. However, as per record, petitioner has not joined investigation in the said F.I.R. till date.

iii. F.I.R. No. 17 dated 03.02.2016 under section 363, 366A, 376, 120-B I.P.C. and section 4 POCSO Act, 2012 registered at Police Station Adampur, District Hisar (Haryana). In the said F.I.R., petitioner has been acquitted on 19.07.2016 by Ld. Court of Ms. Alka Malik, Additional Sessions Judge, Hisar (Haryana).”

It is also submitted that the instant case FIR has also been registered under Section 27-A of the NDPS Act and accordingly the bar under Section 37 of the NDPS Act, 1985 is attracted and the custodial interrogation of the petitioner is required in this case. Accordingly, prayer for dismissal of the petition has been made.

I have heard learned counsel for the parties and also gone through the paper book as well as the status report filed on behalf of the State of Haryana.

In this case, the petitioner has been named in the FIR on the basis of the statement by the co-accused Hetram, who stated that Bajrang s/o Om Prakash, resident of Bhana, District Hisar had given 7 Kgs and 400 grams of poppy husk for Rs.28,000/- at his home. The petitioner is stated to be the supplier of the alleged contraband. As regards, the submission of the petitioner that the statement of the co-accused is not admissible in evidence,

suffice it to say that as per the Section 30 of the Evidence Act, when more than one persons are being tried jointly for the same offence and a confession made by one of such persons affecting himself and other of such person, is proved then the Court may take into consideration such confession as against such other person as well as against the person who make such confession. Even otherwise, such statement can certainly be looked into for providing lead in the investigation.

Further, a perusal of the FIR would reveal that the petitioner along with co-accused (Hetram) have been booked for offences under Section 15(b) and Section 27-A of the NDPS Act and in this regard Section 37 of the NDPS Act would be relevant and same reads as under:

S.37 “Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(iii) (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

A perusal of the abovesaid provision contained under Section 37 clearly provides that no person accused of an offence punishable under Section 27-A of the NDPS Act shall be released on bail or on his own bond unless the public prosecutor has been given an opportunity to oppose the application for such release and where the public prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any such offence while on bail.

In the instant case, there is nothing on record to enable this Court to record *prima facie* satisfaction for believing that petitioner is not guilty of the offence or that he will not commit any offence while on bail especially when the petitioner is involved in two more cases under the NDPS Act.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

In case of State represented by the ***C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268***, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation to find out as to from where he had

procured the contraband and who all are involved in this crime. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus, finding no merit in the petition, the same stands dismissed.

12.04.2023
Himani

(HARSH BUNGER)
JUDGE

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| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |