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

CRM-M-9870-2023 (O&M)
Date of Decision: 17.05.2023

SHIV KUMAR VAISHNAV

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Bikram Chaudhary, Advocate
for the petitioner.

Mr. R.S. Jhund, Addl. A.G., Haryana.

HARSH BUNGER, J. (ORAL)

CRM-17635-2023

This is an application for grant of exemption from filing certified/fair typed copy of Annexure P-2.

For the reasons mentioned in the application, the same is allowed as prayed for.

Criminal Misc. Application stands disposed of accordingly.

CRM-17636-2023

This is an application for placing on record the license of the petitioner dated 02.06.2022 as Annexure P-2.

For the reasons mentioned in the application, the same is allowed and Annexure P-2 is taken on record, subject to all just exceptions.

CRM-M-9870-2023

Petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.847 dated 17.12.2022 under Sections 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (in

short “NDPS” Act), registered at Police Station Sector 8 Faridabad, District Faridabad.

2. Upon issuance of notice in this case, the status report by way of an affidavit dated 21.03.2023 of Sh. Surender Sheoran, H.P.S., Assistant Commissioner of Police, Crime, Faridabad, on behalf of respondent-State of Haryana, has been filed, which is already on record.

3. Briefly, the above-said FIR was registered on the complaint of Sub Inspector Jalaluddin, Crime Branch, Ballabgarh, on the allegations that on 17.12.2022, he alongwith fellow employees was present in government vehicle No. HR-51GV- 8038 at Sector 7/10 Market, Faridabad, in connection with patrolling, when in the meantime, a secret informer informed that one person namely Imran son of Abid Khan is indulged in selling narcotic injections and he can be apprehended. Believing the information to be true, the Investigating Officer sent notice through Constable Rohit for taking necessary permission for installing a barricade. Thereafter, a police party headed by complainant reached YMCA bridge and after 15 minutes, one auto bearing Registration no.HR-38AC-7554 came from the side of Ballabgarh. The secret informer signaled towards auto rickshaw and after following procedure, that person was served with a notice under Section 50 of NDPS Act who opted for getting search conducted before a gazetted Officer. Thereafter, Duty Magistrate Sh. Rajeev, AGM, HSIIDC was informed and he reached at the spot and gave directions to search the accused. On search, a polythene was recovered from accused, which contained *buprenorphine injections* IP, 5x2 ML Bupine batch No.22406 and manufacture date 7/22, expiry dated 06/2014 i.e. total 14 injections. The accused could not produce any license or permit for keeping the aforesaid injections; accordingly, FIR was registered and accused Imran was arrested on 17.12.2022. During

investigation, Imran suffered his disclosure statement disclosing that he used to purchase injections from petitioner Shiv Kumar, owner of New Gujan Medical Store.

4. Apprehending his arrest in this case, the petitioner approached the Court of Additional Sessions Judge, Faridabad seeking grant of pre-arrest bail by filing an application; however, the same was declined by the learned Additional Sessions Judge, Faridabad vide order dated 07.02.2023. Accordingly, the petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail.

5. 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 co-accused Imran, which is not admissible in the evidence. It is further submitted that the petitioner is a chemist and is running a chemist shop at Aligarh and is not involved in any kind of criminal activity. 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 by the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

6. 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 has submitted that the co-accused Imran was apprehended with *14 Buprenorphine Injections* without any permit or licence and said Imran had suffered a disclosure statement during interrogation that he used to purchase the recovered narcotic substance from the petitioner. It

is submitted that the custodial interrogation of the petitioner is required for unearthing the nexus of drug peddling which is ruining the youth of the country. Accordingly, prayer for dismissal of the petition has been made.

7. 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.

8. In this case, the petitioner has been nominated as an accused on the basis of disclosure statement of co-accused Imran. The petitioner is stated to be the supplier of the alleged narcotic substance. 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.

9. Further, a perusal of the FIR would reveal that the petitioner along with co-accused (Imran) have been booked for offences under Section 22(c) 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 [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.*
- (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 involving commercial quantity, 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.

10. 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.

11. 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.

12. 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.

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

14. Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No.847 dated 17.12.2022, under Sections 22(c) of the NDPS Act, registered at Police Station Sector 8 Faridabad, District Faridabad; is dismissed.

15. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

16. All pending application/s, if any, shall also stand closed.

May 17th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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