

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11528-2023
Reserved on: 19.04.2023
Pronounced on: 15.05.2023

Rahul ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gurinder Singh Goraya, Advocate for the petitioner(s).

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
0289	28.09.2022	Munak, Distt. Karnal	22 (C) of NDPS Act, 1985

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, on the allegations of indulging in drug trade and selling 900 tablets containing APRRAZOLAM, to Ravi, from which the police had seized the same, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 13 of the bail petition, the accused declares that he has no criminal antecedents.
3. The petitioner’s counsel contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State’s counsel opposes the bail.

REASONING:

5. The quantity allegedly involved in this case is commercial and the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.
6. The petitioner claims bail by specifically stating his stand in paragraph 5 of the bail petition, which reads as follows:

“(5). That the petitioner is young man aged about 21 years and doing job in the chemist shop "Arora Medical Agency" Near Shive Mandir Sethi Colony, Darbari

Road Saidpura Karnal- 132001 to survive his family. The accused Ravi is doing job in M/s Jassi Medical Store VPO Munak. M/s Arora Medical Agency supplies drugs to M/s Jassi Medical Store VPO Munak Haryana. In the course of business transactions phone calls were also exchanged. The petitioner has clean antecedents and his arrest in the present would affect his future prospects. The certificates to the effect that the petitioner is employee at M/s Arora Medical Agency is attached herewith as Annexure P-1

6. That the transactions between M/s Arora Medical Agency and M/s Jassi Medical Store VPO Munak Haryana are annexed herewith as Annexure P-2."

7. During the course of hearing on April 12, 2023, this court had asked the State to file further instructions and the status report has been filed by the concerned DySP, which reads as follows:

"(1) That this Hon'ble Court at the time of hearing the present petition directed the state on 12.04.2023 to verify the following facts.

I) Whether the petitioner is an employee of the alleged company i.e. Arora Medical Agency.

II) Whether the above said company issued y the bills for the alleged contraband recovered from co-accused of the present petitioner.

(2) That in response to this the answering deponent directed the Investigating Officer of case bearing FIR No 0289 dated 28.09.2022 under section 22 (C) NDPS Act 1885 registered at police Station Munak District Karnal to submit report on the two points which were raised by this Hon'ble court at the time of arguments in the present petition.

(3) That ASI Ram Niwas Investigating Officer of the above said case has visited the Kamal Arora S/o Harish Kumar [H.NO. 25](#), Ram Nagar, Karnal, District Karnal who is owner of Ms/ Arora Medical Agency, Sethi Colony, Dabri Road, Shahadpura, Karnal and the said owner of the agency submitted his statement by way of affidavit in which he has alleged that:-

"He is whole saler of Medicines by profession and his firm name is M/S Arora Medical Agency, Sethi Colony, Dabri Road, Shahadpura, Karnal and is working from last 7 years. He e further alleged that Rahul S/o Attar Singh R/o Gandhi Nagar, Karnal who was working in his shop from the year 2019 and this boy supplied the medicines and he worked with us upto 30.08.2022 and after that he left the job and after that he has no relation with Rahul. He further alleged that the medicines which are Alprsafe and Alprazolam 0.5 which were recovered from Ravi. He has no concerned with that medicines and he never issued any bill for the same "

8. Thus, the stand of the petitioner has been falsified at this stage. The police has collected sufficient evidence connecting the petitioner with the offence and this court is not dealing with a regular bail but an anticipatory bail involving a commercial quantity of intoxicants.

9. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by the stringent conditions placed in the statute

by the legislature under section 37 of the NDPS Act. Thus, the petitioner has failed to make a case for bail at this stage.

10. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

11. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 CrPC.

12. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

15.05.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.