

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

CRM-M-12686-2023

Date of decision : 15.03.2023

Surender

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sandeep Sharma, Advocate
for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court praying for grant of anticipatory bail in case FIR No.304 dated 16.08.2022, under Sections 20 (b)(ii)(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 27(a), 29/61/85 of NDPS Act were added later on), registered at Police Station Badshahpur, District Gurugram, Haryana.

As per the facts of the case, on 16.08.2022, while on patrolling, police party received a secret information. It was informed that Chet Ram son of Mangal Singh had constructed many rooms at Dhani of Fazilpur and all the rooms are rented out. Out of them, one room is rented out to Pammi wife of Arun and heavy quantity of contraband is kept there. It was informed that she would take Ganja from her room to give to someone and if raid is conducted then the same can be recovered. On receipt of the secret information, procedure under Section 42 of NDPS Act was completed and information was sent to the higher authorities.

Raiding team was constituted and the raid was conducted along with secret informer. On giving the signal by secret informer, a lady holding a white coloured bag in her right hand was stopped. From the white plastic bag being carried by her, search was conducted on compliance of Section 50 of NDPS Act. On search total contraband weighing 47.90 kg Ganja was recovered. The FIR was registered and the investigation commenced. During investigation, the disclosure was made by the co-accused that the accused/petitioner supplied the recovered contraband Ganja to the co-accused and thus, the petitioner was involved in the FIR. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Gurugram praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide order dated 15.02.2023. Aggrieved by the same, petitioner is before this Court praying for grant of anticipatory bail.

It has been contended by counsel for the petitioner that the petitioner is neither named in the FIR nor there is any recovery at his behest and thus, he has been falsely implicated in this case. He has submitted that the petitioner is working as a transporter having his own commercial vehicle. He has submitted that the name of the petitioner has been mentioned on the basis of disclosure statement of co-accused which is an inadmissible evidence and thus, the petitioner deserves to be granted anticipatory bail.

Learned State counsel has opposed the prayer made by learned counsel for the petitioner and has submitted that 47.90 Kg of Ganja was recovered from the co-accused which is commercial quantity and the petitioner has been named as a supplier of the contraband and as

such, his involvement in the crime is very much established. He prays for dismissal of the present petition.

After hearing counsel for the petitioner and perusing the record, it is apparent that the recovery from the co-accused is 47.90 kg of Ganja which falls under the category of commercial quantity. In the disclosure statement made by the co-accused, it was specifically mentioned that it was the petitioner who supplied the contraband to the co-accused. The quantity recovered is a heavy commercial quantity and thus, provisions of Section 37 of NDPS Act would be attracted in this case. There is nothing on record to show the presumption at this stage that the petitioner is not involved in this case.

Hon'ble the Supreme Court in **State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187** has 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 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he 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 task of disinterring offences
would not conduct themselves as offenders.*

Hon'ble Supreme Court in *The State of Haryana vs. Samarth Kumar, 2022 Livelaw (SC) 622* has held that in the cases like the present one, the accused may take advantage of facts like no recovery was effected from him and that he was implicated on the basis of disclosure statement made by the main accused, at the time of arguing regular bail application or at the time of final hearing after conclusion of trial

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances.

Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in their favour. Resultantly, the petition being devoid of any merit is hereby dismissed.

15.03.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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