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

CRM-M-17177-2023

Date of Decision: 02.05.2023

Rajan and another

....Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Ms. Kiranjeet Kaur, Advocate
for the petitioners.

Mr. Subhash Godara, Additional, A.G., Punjab.

HARSH BUNGER, J. (Oral)

Prayer in the present petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioners in case FIR No.47, dated 19.03.2023, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Annexure P-1) at Police Station Sadar, Fazilka, District Fazilka.

2. On 12.04.2023 the following order was passed by this Court :-

“Prayer in this petition, filed under Section 438 of the Code of Criminal Procedure, 1973, is for grant of anticipatory bail to the petitioner, in case FIR No.47 dated 19.03.2023, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act (Annexure P-1) at Police Station Sadar, Fazilka, District Fazilka.

2. Succinctly, the above-said FIR has been registered at the instance of ASI Baldev Singh, on the allegations that he along with other police officials was present in the area of bridge, canal minor Koharian Wali, link road Military Station when he received a secret information that Vipin Kumar and Rajinderpal Singh were habitual of selling drugs. It was further informed that on the same day, they were in possession of narcotic powder and were going towards town to sell the same and if a picket is laid at an appropriate place, they could be

apprehended along with heavy quantity of narcotic powder. Finding the information to be trustworthy, ruqa was prepared, on the basis of which, the present FIR was registered. It is submitted that thereafter, picket was laid and after some time, Vipin Kumar and Rajinderpal were arrested and from their possession, heroin weighing 5 grams each was recovered.

3. *Learned counsel for the petitioner, inter alia, contends that the petitioners are innocent and have falsely been implicated in the present case at the behest of co-accused namely Vipin son of Rajpal and Rajinderpal Singh son of Jagtar Singh, who have already been arrested by the police as the alleged recovery of 5 grams of heroin was effected from each of them in the present case. It is submitted that the petitioners were nominated as accused vide DDR No.21 dated 20.03.2023. Learned counsel further submits that the petitioners have no concern or connection with the said accused persons and nothing is to be recovered from them. It is submitted that the petitioner is not involved in any other case. It is further submitted that the alleged recovery from main accused is non-commercial quantity and bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act is not attracted. It is contended that the anticipatory bail application filed by the petitioner has wrongly been dismissed by the learned Judge, Special Court, Fazilka, vide order dated 27.03.2023 (Annexure P-3). Learned counsel submits that the petitioners are ready and willing to join investigation as and when required by the Investigating Agency or as directed by this Court/trial Court.*

4. *Notice of motion.*

5. *On the asking of the Court, Mr. Subhash Godara, Additional Advocate General, Punjab, who is present in the Court, accepts notice on behalf of the respondent-State and opposes the petitioners' prayer for interim anticipatory bail on the ground of seriousness of offence; however, he seeks time to get instructions in this matter.*

6. *List on 02.05.2023.*

7. *In the meanwhile, in the event of arrest of the petitioners, they shall be released on ad interim bail to the satisfaction of the Investigating/Arresting Officer. However, they shall join the investigation as and when directed by the investigating agency and shall abide by the terms and conditions laid down under Section 438(2) Cr.P.C.*

8. *A copy of the complete paper book be supplied to learned State counsel by the learned counsel for the petitioners during course of the day."*

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3. Learned counsel for the petitioners submits that pursuant to the aforesaid order, the petitioners have joined the investigation.

4. Learned State counsel on instructions from ASI Raj Singh has not disputed the aforesaid fact of joining of investigation by the petitioners and submits that their custodial interrogation is not required at this stage.

5. Heard learned counsel for the parties.

6. Since the petitioners have joined the investigation and their custodial interrogation is not required at this stage, the present petition is allowed and the ad-interim order dated 12.04.2023 passed by this Court is made absolute.

7. However, the petitioners shall continue to join the investigation as and when required to do so and abide by all the conditions laid down under Section 438(2) Cr.P.C.

8. It is made clear that if the petitioners fail to comply with any of the bail conditions laid down under Section 438(2) Cr.P.C, the State would be at liberty to move an application for cancellation of this anticipatory bail granted to the petitioners.

9. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for anticipatory bail at this stage.

10. The petition is accordingly disposed of.

02.05.2023
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No