

CRM-M-17416 of 2023

2023:PHHC:052297

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

CRM-M-17416 of 2023

Date of decision: 13.04.2023

Rohit Kumar Sharma

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. DPS Jaura, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.193 dated 21.03.2023 under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Sirsa City, District Sirsa.

2. According to the prosecution, on 21.03.2023 co-accused Monu was found keeping in his conscious possession 07.40 grams heroin wrapped in a glazed paper without any permit or license in the area of Police Station City Sirsa, which was allegedly given by the petitioner for sale.

3. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. He further submits that petitioner has been nominated as an accused on the basis of disclosure statement of co-accused, which is per

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se not admissible in evidence and no recovery has been effected from him. He further submits that petitioner is also involved in one more case bearing FIR No.325 dated 04.05.2017 under Section 21 of the NDPS Act, registered at Police Station City Sirsa, wherein he stands acquitted vide order dated 03.09.2019 passed by the Court of learned Sessions Judge, Sirsa. He further submits that petitioner is ready and willing to join the investigation.

4. On receipt of advance copy of the petition, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner by submitting that petitioner is a habitual offender, therefore, his custodial interrogation is necessary.

5. I have heard learned counsel for the parties and perused the record.

6. In ***State of Haryana vs Samarth Kumar, 2022(3) R.C.R.(Criminal) 991***, the Hon'ble Supreme Court held that the accused is not entitled for anticipatory bail only on the ground that no recovery was effected from the accused and he has been implicated on the basis of disclosure statement.

7. In ***Samrath Kumar's*** case (supra) the Hon'ble Supreme Court observed as under:-

“In cases of this nature, the respondent may be able to take advantage of the decision in Tofan Singh vs State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after the conclusion of the trial. To grant anticipatory bail in case of this nature is not really warranted. Therefore,

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we are of the view that the High Court fell into an error in granting anticipatory bail to the respondent.”

8. Moreover, petitioner is a habitual offender as he is involved in one more case under the NDPS Act.

9. In ***Bal Krishan Fauzdar v. State of Haryana 2018 (1) RCR Criminal 789***, it is held by a Co-ordinate Bench of this Court in para No. 8 as under: -

“.....It is well settled that custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him. 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.”

10. The law laid down in this judgment is fully applicable to the facts of the case in hand.

11. In view of the above, petitioner is not entitled to concession of anticipatory bail as his custodial interrogation is required.

12. Dismissed.

13.04.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No