

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-20925-2023

Date of Decision : 27.04.2023

Vijay

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present : Mr. Kawalpreet Singh Virk, Advocate
for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

1. The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.212 dated 26.03.2023 registered under Sections 18 and 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Assandh, District Karnal.

2. Brief facts of the case are that on 26.03.2023, the police party headed by SI Mahender Singh received a secret information that Bhag Singh @ Happy and Vijay (present petitioner), who have been indulged in sale of Opium Tincture in the area of Assandh, are present at the junction of road leading towards Chanana College and Dada Khera Assandh and if raid is conducted, they could be apprehended. On the basis of said information, the police reached at the disclosed place. On seeing the police party, one boy was fled from the spot. The other boy was apprehended by the police who told his name Bhag Singh @ Happy

and on search, 5 kg 324 grams Camphorated Opium Tincture was recovered from him.

3. Learned counsel for the petitioner submits that the petitioner was not apprehended on the spot and nothing was recovered from him. The petitioner has been falsely implicated in the case only on the basis of disclosure statement made by co-accused Bhag Singh @ Happy. The petitioner has nothing to do with the alleged contraband recovered from the co-accused. There is no direct or indirect evidence against the petitioner to connect him with the commission of alleged crime except the disclosure statement of co-accused which has no evidentiary value in the eyes of law. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is already ready and willing to join the investigation. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court passed in ***Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence : 2018(3) RCR (Criminal) 954.***

4. Notice of motion.

5. On the asking of the Court, Mr. Munish Sharma, Asstt. A.G., Haryana, who is present in the Court, has accepted notice on behalf of the respondent-State and opposed the present petition on the grounds that the petitioner was specifically named in the secret information received by the police and then co-accused Bhag Singh @ Happy also disclosed the name of the petitioner as a person who fled

from the spot. The alleged contraband recovered from the co-accused falls under the category of commercial quantity. The petitioner is also involved in 01 other case under the IPC. For thorough investigation of the case, custodial interrogation of the petitioner is required.

6. I have heard learned counsel for the petitioner as well as learned State counsel and perused the record.

7. As per the prosecution, from the consistent revealing the name of the petitioner by the co-accused and secret informer, the involvement of petitioner in the present case cannot be ruled out at this stage. Moreover, the quantity of contraband recovered in the present case falls under the category of commercial quantity which attracts the rigorous of Section 37 of the NDPS Act.

8. In ***State of Haryana Vs. Samarth Kumar : 2022 Live Law (SC) 622***, 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. In the said case, 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, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondent.”*

9. The Hon'ble Apex Court in case ***State of Punjab Vs. Baldev Singh : 1999 AIR SC 2378*** has observed regarding Drug

Addiction, Drug abuse and its effect on the society. The Hon'ble Apex Court in Para No.3 has observed as under:

"3. Drug abuse is a social malady. While drug addition eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Australia in 1988 was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this convention."

10. The aforesaid ratio of law has also been reiterated by the Hon'ble Supreme Court recently in ***Sri Thaha Ummer Vs. Union of India, (Criminal Petition No.9450/2022 decided on 9.11.2022).***

11. Moreover, the antecedents of the petitioner are also not good as he is already involved in 01 other case under the IPC. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

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12. In view of the above, this Court is of the considered view that for proper investigation; to find any nexus between the petitioner and his co-accused and for knowing the source of contraband, the custodial interrogation of the petitioner is necessary.

13. Consequently, the present petition being devoid of any merit is dismissed.

14. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

27.04.2023

Kothiyal

(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No