

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22726-2023 (O&M)
Date of order: 15.05.2023

Arif
... Petitioner(s)
Versus
State of Haryana
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Sandeep Kotla, Advocate
for the petitioner(s).

Mr. Manish Bansal, Sr. DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
73	10.3.2023	Quilla, Panipat	20 NDPS Act

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 dealing in 45.300 kg of *Ganja*, has come up before this Court under Section 438 CrPC seeking anticipatory bail.
1. The petitioner incarcerated for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 10 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 has filed reply in Court which is taken on record, based upon which he opposes the bail.

FACTS & REASONING:

5. On 10.3.2023, the police officials who were present at check-post received a secret information that one person, who driving a Santro car having registration No.HP34A-8819, was carrying *Ganja*. On this, the police laid a *naka*. On seeking him, he was signalled to stop. After stopping the car, the driver tried to flee but was nabbed.

He revealed his name as Ramesh. On search of the vehicle, the police recovered 45.400 kgs. of *Ganja*. On his arrest, he made disclosure statement to the investigator that he had purchased that *Ganja* from Arif (the petitioner) for a sum of Rs.2,25,000/-. On this, the police started investigation and found conversations in the phones of accused Ramesh and the petitioner Arif. In paragraph 2(iv) of the preliminary submissions of the reply filed by the State, the phone numbers and calls have been mentioned and the details have been annexed in Annexure R-3. A perusal of the call details referred to exchange of calls between the petitioner and the driver from whom police recovered *Ganja*. The quantity involved in the present case is commercial and it is for the petitioner to come out of rigours of Section 37 of the NDPS Act. A perusal of the bail petition reveals that it is only a formal drafting and no reasons have been mentioned therein. Explanation offered is about call details only. No reasons have been mentioned about the dealings with the main accused Ramesh.

6. Petitioner's counsel has argued that the petitioner was not named in the FIR and he has been involved on disclosure statement and he has no criminal history. Needless to say that the informer did not tell about the petitioner, but his name surfaced during interrogation when the police wanted to know the source of the contraband. The call details *prima facie* corroborate the link between the petitioner and the driver from whom the police recovered the commercial quantity of *Ganja*.

8. In State of Punjab v Baldev Singh, (1999) 6 SCC 172, the Constitutional bench of Hon'ble Supreme Court holds,

[14]. The provisions of Sections 100 and 165 Cr.P.C. are not inconsistent with the provisions of the NDPS Act and are applicable for effecting search, seizure or arrest under the NDPS Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the NDPS Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the NDPS Act, who should thereafter proceed from the stage in accordance with the provisions of the NDPS Act. In Balbir Singh's case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Cr.P.C. in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 *per se* does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view.

9. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under Section 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 enroped 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

May 15, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No