

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24662-2022
Reserved on: 01.02-2023
Pronounced on: 16.02.2023

Sultan ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr.K.L. Saini, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
148	02.03.2022	City Rohtak District Rohtak	20(b) (II) C of NDPS Act, 1985

1. The petitioner apprehending arrest in the FIR captioned above, had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. Vide order dated 31-05-2022, the petitioner was granted interim bail, which is continuing till date.
3. Petitioner's counsel prays for bail by imposing any stringent conditions. He further argued that the custodial investigation would serve no purpose whatsoever, and the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
4. The State's counsel opposes the bail.

REASONING:

5. On 2nd March 2022, the police had recovered 32 kgs of Ganja from Sanjay. The said quantity falls in the category of commercial and rigors of section 37 of NDPS Act apply for bail. During the interrogation, the accused, Sanjay, disclosed to the investigator that he had been supplying ganja to various persons, including the petitioner, Sultan. Per para 23 of the status report, the police found an exchange of calls between Sanjay and the petitioner. Based on this evidence, the investigator arraigned the petitioner as an accused, apprehending arrest; he came up before this court seeking

pre-arrest bail. The police did not recover any ganja from the petitioner. Thus, the initial

burden to connect the petitioner with any prohibited substance, violating NDPS Act, did not shift on the petitioner, and the situation would not arise when the doctrine of reverse burden would follow, as envisaged by the legislature under section 37 of the NDPS Act. Vide order dated 11-Jan-2023, this court, while extending bail, had imposed certain conditions, which are stated to have been complied with, and the petitioner has also joined the investigation. Thus, there would be no justification to keep this bail waiting for the proper investigation. The petitioner was granted interim protection, and during the interregnum, there is no allegation that he had intimidated the witnesses or that he had hampered the investigation, or despite being called to join the investigation, he did not appear before the investigator. Given the above, there would be no justification to discontinue the interim protection, and the same is made absolute subject to the petitioner complying with the terms of the bail order and the following additional conditions.

6. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior. **It is clarified that in case the petitioner does not mend his ways and repeats the offence or indulge in criminal behaviour, then in all future matters, the concerned courts shall keep it as a factor that this court had afforded a final opportunity to the petitioner to reform and live a normal life but did not mend his ways.**

7. The conditions mentioned above imposed by this court are to endeavour that the accused does not repeat the offence and to ensure the safety of the witnesses, victim, and their families. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In Sumit Mehta v. State of N.C.T. of Delhi, (2013)15 SCC 570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation. In Mohammed Zubair v. State of NCT of Delhi, Writ Petition (Criminal) No 279 of 2022, Para 29, decided on July 20, 2022, A Three-Judge bench of Hon'ble Supreme Court holds that "The bail conditions imposed by the Court must not only have a nexus to the purpose that they seek to serve but must also be proportional to the purpose of imposing them. The courts while imposing bail conditions must balance the liberty of the accused and the necessity of a fair trial. While doing so, conditions that would result in the deprivation of rights and liberties must be eschewed."

Petition allowed in aforesaid terms. Interim order dated 31.05.2023 is made absolute

subject to strict compliance of all terms and conditions. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

16.02.2023
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Whether speaking/reasoned: Yes
Whether reportable: No.