

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

CRM-M-26283 of 2023
Date of decision: 25.05.2023

Sakir

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Saurav Bhatia, Advocate, for the petitioner.
Ms. Gaganpreet Kaur, DAG, 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.142 dated 21.03.2022 under Section 20-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of the NDPS Act added lateron), registered at Police Station Hodal, District Palwal (Haryana).

2. According to the prosecution, on 21.03.2022, on the basis of secret information, from the container bearing registration No.RJ11GB-5743 being driven by co-accused Jamshed son of Jamil, 22 sacks having total quantity of 661.450 kgs of *ganja patti* was recovered. Co-accused Jamshed and Arbaj son of Mubin, who was sitting on the conductor side, were arrested. They disclosed that the recovered narcotic substance belongs to the petitioner.

3. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. He has not been named in the FIR and no specific role has been attributed to him.

Petitioner's name came in the disclosure statement of co-accused, which is

per se not admissible in evidence and no recovery has been effected from him. 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 has specifically been named by his co-acused and the recovered contraband falls under the category of commercial quantity. She further submits that petitioner is having a criminal background as he is involved in four more cases.

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

6. 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.

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

8. In para 18 of the petition, petitioner has mentioned that he is

involved in one other case, in which he is on bail, whereas learned State counsel has pointed out that petitioner is involved in four more cases. The petitioner has intentionally not disclosed the factum of registration of three other cases against him, which amounts to concealment.

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 the above judgments 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. Nothing observed hereinabove shall be construed as an expression of opinion on the merits of the case.

25.05.2023

R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No