

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

**CRM-M-27725-2022 (O&M)
Date of Decision: January 31, 2023**

Ankush Jain

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

DEEPAK GUPTA, J.(Oral)

By way of this petition filed under Section 438 Cr.P.C., petitioner prayed for grant of anticipatory bail in case FIR No.123 dated 03.06.2022, registered at Police Station Buria, District Yamuna Nagar, under Sections 22 and 29 of (Act No.61) the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. Allegations are that on 03.06.2022 on the basis of secret information, one Sahil was apprehended. He was found in possession of 552 capsules of Spasmo Cureon containing tramadol and 432 capsules of Spas Parvion Plus. Weight of the capsules was found to be 762 grams, which is of commercial quantity. During his disclosure statement, said Sahil nominated petitioner Ankush Jain by disclosing that he had taken six boxes from under construction house of petitioner and that he was told by the petitioner that one person will come to take away those boxes. As he was standing on the turn of the street, waiting for the person, police raided there and caught him with the boxes.

3. It is contended by the petitioner that he is running a chemist shop in the name of M/s Jain Medical Store under a valid licence; that he

has nothing to do with the recovered contraband nor with the under constructed house.

4. On 29.06.2022, this Court had passed the following order:

*“Inter alia contends that in the present case, no recovery has been effected from the petitioner and the petitioner has been solely implicated on the basis of the disclosure statement of Sahil from whom the recovery has been effected. It is further submitted that the petitioner is not involved any other case. Reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal)** 1, an order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M12051-2020 titled **“Mewa Singh Vs. State of Punjab”**, and an order of another Coordinate Bench dated 16.07.2021 passed in CRM-M-12997-2020 titled as **“Daljit Singh Vs. State of Haryana”** to contend that in such like cases if a person has only been proceeded against on the basis of disclosure statement of co-accused and no recovery has been effected from the petitioner, then he should be granted the concession of anticipatory bail.*

Notice of motion for 16.08.2022.

In the meantime, in the event of arrest, the petitioner is ordered to be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

Learned State counsel is directed to file a short affidavit to the effect as to whether there is any phone call between the petitioner and the persons from whom the recovery has been effected or as to whether there is any other incriminating evidence against the petitioner other than the disclosure statement.”

5. Pursuant to the aforesaid order, petitioner who was allowed interim bail, joined the investigation. Shri Rajiv Kumar, HPS, Deputy Superintendent of Police-I, Yamuna Nagar has filed reply by way of his

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affidavit, which reveals that call details records of mobile phones of the petitioner as well as Sahil were taken into possession. Perusal of the same revealed regular talks between them. After joining of the investigation by the petitioner, he was questioned, during which he answered 53 questions but did not give proper reply and refused to put the signature and left the investigation. Translated copy of the questionnaire has been placed on record as Annexure R-2.

6. It is contended by learned counsel for the petitioner that co-accused Sahil was working under him at the medical store and that he (petitioner) cannot be responsible for the acts of the co-accused. It is also contended that the under constructed house as referred by co-accused Sahil does not belong to him. It is very usual to have regular conversation between employer and the employee and so, on the basis of call details record of the petitioner and co-accused Sahil, no inference against the petitioner can be drawn.

7. Refuting the aforesaid contention, learned State counsel has pointed out towards the questions, which were put to the petitioner during investigation. During that interrogation, it was disclosed that Sahil was employed by the petitioner at his shop for the work of cleaning; that Sahil had no knowledge about any medicine; that under constructed house in front of his medical store belongs to him, although it was claimed that he had no knowledge of storing any drugs therein. As per the State counsel after 53 questions, petitioner left the investigation. It is submitted that when the petitioner has not cooperated in the investigation and left the investigation in between, he does not deserve to be granted

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the benefit of anticipatory bail, as his custodial interrogation will be necessary to unearth the source of contraband.

8. Having considered submissions of both the sides, I am of the view that the petitioner does not deserve to be extended the benefit of anticipatory bail. After being granted the interim bail, though the petitioner joined the investigation but did not cooperate in the same. As per some of the questions answered by him, under constructed house belongs to him. Co-accused Sahil from whom recovery was effected was working under him and said Sahil did not have the knowledge about medicines. In these circumstances, custodial interrogation of the petitioner will be necessary to unearth the entire truth, particularly source of contraband. As such, without commenting anything further on the merits of the case, this Court is not inclined to grant the benefit of anticipatory bail to the petitioner.

Dismissed.

January 31, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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