

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

212

CRM-M-34955-2021

Date of decision : 19.01.2023

Jaiditya Ahir

Petitioner

V/S

State of Haryana

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. A.G., Haryana
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

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.188 dated 08.04.2020 registered under Sections 15, 18, 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 140, 188, 216, 419, 420, 467, 468, 471 and 474 of the Indian Penal Code, 1860 and Section 6 of the Official Secret Act, 1923 at Police Station Pehowa, District Kurukshetra.

Brief facts of the case are that, on 08.04.2020, on the basis of secret information, the police apprehended co-accused Balbir Singh @ Balbira (driver) and Harjinder Singh (cleaner) and on search 248 kgs of poppy husk, 1 Kg 500 grams of opium and 199 kgs khas khas were recovered from their Canter No.HR-65C-1530. During investigation, co-accused Balbir Singh @ Balbira suffered disclosure statement disclosing that he had purchased the alleged contraband from the petitioner for Rs.10,00,000/-

Notice of motion was issued on 26.08.2021 along with

interim directions in favour of the petitioner to join the investigation.
Order dated 26.08.2021 is reproduced here as under:-

“At the very outset, learned counsel for the petitioner submits that in para no.5 of the petition, due to some typographical error word 'admissible' has been mentioned in place of 'inadmissible'.

Learned counsel further submits that the petitioner has been implicated on the basis of disclosure statement of co-accused Balbir Singh @ Balbira. Learned counsel further relies upon order dated 16.07.2021 passed in the case of co-accused Daljit Singh, who has also been implicated on the basis of disclosure statement of co-accused.

Notice of motion for 05.11.2021.

As one time arrangement, petitioner is directed to appear before the SHO/Investigating Officer to join investigation on 01.09.2021 at 11.00 A.M., and in the event of his arrest, he shall be enlarged on interim bail, subject to his furnishing requisite bail bonds/surety bonds to the satisfaction of Arresting Officer. However, petitioner shall abide by the conditions as envisaged under Section 438(2) Cr.P.C. Nothing expressed hereinabove shall be construed to be an opinion on the merits of the case. The case shall be decided on merits on the adjourned date.

26.8.2021
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(RAJ MOHAN SINGH)
JUDGE”

Thereafter, the case was adjourned for filing reply on behalf of the State.

Learned State counsel opposed the present petition in terms of reply dated 07.01.2023 filed by way of an affidavit of Sh.Gurmail Singh, HPS, DSP, Pehowa, Kurukshetra which is taken on

Learned State counsel submits that the petitioner was escorting the canter in which the contraband was present and he was assigned the duty of giving signal in case of presence of police on the way. Learned State counsel relies upon call details, tower location of the petitioner and the co-accused and also relies upon bank statement showing deposit of amount in the account of co-accused. The material on which the learned State counsel relies upon is dependent upon the evidence to be led in that context at the relevant stage.

Petitioner has joined the investigation, but learned State counsel seeks custody of the petitioner on the aforesaid premise.

Having heard learned counsel for the parties, I find that the petitioner having involved on the basis of disclosure statement of co-accused namely Balbir and Rajinder is hit by the ratio of ***Tofan Singh Vs. State of Tamil Nadu, Criminal Appeal No.152 of 2013*** wherein it has been observed that the officers who are invested with powers under Section 53 of NDPS Act are the police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made before the police officer would be hit by Section 25 of the Evidence Act. Statement under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act.

In view of aforesaid position, it would be just and appropriate to confirm order dated 26.08.2021, without meaning anything on the merits of the case.

Ordered accordingly.

However, the petitioner shall keep on joining the investigation as and when required to do so by the Investigating Officer

and shall abide by the conditions as envisaged under Section 438(2)
Cr.P.C.

Petition stands disposed of.

19.01.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No