

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-38863-2023 (O&M)

Reserved on: 14.09.2023

Pronounced on: 19.09.2023

Ajay Kumar

... Petitioner(s)

Versus

State of Haryana

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Dharamveer Singh Phour, Advocate
for the petitioner(s).

Mr. Rajat Gautam, Addl.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
133	14.05.2023	Ram Nagar, Karnal	218, 389 IPC and Sections 7 and 10 of the Prevention of Corruption Act.

1. The petitioner apprehending arrest in the FIR captioned above, had come up before this Court under Section 438 CrPC seeking anticipatory bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. Vide order dated 06.09.2023, this Court had granted interim protection to the petitioner subject to his complying with certain conditions.
4. Counsel for the petitioner submits that they have voluntarily complied with all the conditions.

REASONING:

5. In nutshell, prosecution’s case is that the petitioner along with other members of the police team entered into a criminal conspiracy with one Sultan, who was nabbed with 995 grams of opium, and in order to bring the quantity of opium to less than 25 grams, they settled a deal for Rs.1,20,000/-. Out of this amount, a sum of Rs.50,000/-

was handed over to co-accused SI Balwan. Thereafter, instead of reducing the opium from 995 grams to less than 25 grams, the police allegedly showed the recovery of opium as 467 grams and thus, being cheated, the present complaint/FIR, captioned above, was filed by Nafe Singh, the elder brother of Sultan, from whom the police had recovered 995 grams of opium. As per the prosecution's case, 528 grams of opium is in the possession of the petitioner and co-accused, which is yet to be recovered.

6. The petitioner seeks bail on the ground that he did not demand any illegal gratification and it was done by SI Balwan and SI Chandreshwar only. This argument is immaterial for the reason that the petitioner was one of the members of the police party, comprising of three persons i.e. SI Krishan, SI Chandreshwar and C. Ajay (petitioner), which had allegedly recovered 995 grams of opium, and against whom investigation is in progress on account of allegations leveled by the complainant. Petitioner's further point is that after the alleged recovery of opium, he had been sent to hand over the report under Section 42 NDPS Act and its compliance and as such, whatever had happened had taken place in his absence. This argument is baseless for the reason that in the complaint filed by Nafe Singh, the elder brother of Sultan, he has specifically stated that the police has shown the arrest of his brother on 8.5.2023 in the evening whereas, in fact, he was arrested on 7.5.2023 from near 152D Highway. Thus, at what time report under Section 42 NDPS Act was sent, is also under scanner.

7. A perusal of the reply filed by the concerned Dy.SP reveals that the police was able to get documentary evidence of withdrawal of Rs.50,000/- from the ATM and video clip as well as recording of phone calls. The petitioner was not only a member of the patrolling party but also shown to have hatched a conspiracy in connivance with co-accused SI Balwan, SI Chandreshwar and SI Krishan. As per paragraph 4 of the reply, the complainant produced video clipping in which the petitioner-accused is seen talking to co-accused Sultan with regard to actual quantity of the contraband and settling the case. It is also stated that the video clip clearly points out towards the petitioner's role and his actual participation in the present case in collusion with co-accused. In paragraph 5 of the reply, the prosecution seeks the custodial interrogation of the petitioner for recovery of the contraband.

8. I have also gone through the police file which was produced before the Court and the same was duly returned at that time. Perusal of the police file and detailed reply points out towards petitioner's involvement in the present case and thus, his custodial investigation is required.

9. Therefore, in the facts, and circumstances peculiar to this case, and for the

reasons mentioned above, the petitioner fails to make out a case for bail.

10. Accordingly, the present petition dismissed. Interim order dated 06.09.2023 shall stand vacated. All pending applications, if any, also stand disposed of.

11. 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.

(ANOOP CHITKARA)
JUDGE

September 19, 2023
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No