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2023:PHHC:060642

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-46640-2022

Date of decision :28.04.2023

IRFAN

... Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: None for the petitioner(s).

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C in case bearing FIR No.206 dated 06.05.2022 registered under Sections 21B-61/85 of NDPS Act at Police Station Sadar Yamuna Nagar.

On 11.10.2022, the following order was passed:-

“The learned counsel for the petitioner has submitted that the name of the petitioner has been nominated on the basis of the disclosure statement of the co-accused from whom the alleged recovery of 30 grams of smack has been effected.

Notice of motion.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana accepts notice on behalf of State of Haryana and has also stated that the petitioner is also involved in another case of similar nature and has prayed for some time to file an affidavit before this Court. He has also stated that the petitioner cannot take ground that his name being nominated on the basis of disclosure statement of the co-accused for the grant of anticipatory bail in view of the judgment of the Hon'ble

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Supreme Court in State of Haryana vs. Samarth Kumar 2022 (3) RCR (Crl.) 991.

Adjourned to 31.10.2022.

Let the State file an affidavit before this Court well within time, with an advance copy to the learned counsel for the petitioner.”

Thereafter, on 31.10.2022, the following order was passed:-

“Learned State counsel has stated that the affidavit which was to be filed by the State has already been vetted by the Office of Advocate General, Haryana but the same could not be filed before this Court due to paucity of time and has prayed for a very short accommodation to file the same.

On his request, adjourned to 03.11.2022.

The State shall supply the copy of the affidavit to the learned counsel for the petitioner well in advance.”

Subsequently, on 23.11.2022, the following order was passed:-

“Reply by way of an affidavit by the DSP, Yamuna Nagar-I on behalf of the State has been filed in Court today, which is taken on record.

Learned counsel for the petitioner has stated that it is a case where the name of the petitioner was nominated on the basis of the disclosure statement of a co-accused, which is not admissible in evidence per se. He submitted that a perusal of the affidavit filed by the State would show that there is no other material available with the police to connect the petitioner with the present offence except the disclosure statement of the co-accused. He further submitted that it has also been stated in the affidavit that even the FSL report has not been received till date. He further stated that the confiscation of 30 grams of smack from the other co-

accused namely Sandeep does not fall under the category of commercial quantity under the NDPS Act and the petitioner has been falsely implicated in the present case only on the basis of the fact that earlier also he was involved in two cases under the NDPS Act but even as per the affidavit filed by the State, there is nothing on record to connect the petitioner with the present offence. In view of the aforesaid position, the petitioner is directed to appear before the Arresting/Investigating Officer and join the investigation and thereafter also as and when called upon to do so.

In the event of arrest, the petitioner shall be released on interim bail subject to furnishing personal bond/surety bond to the satisfaction of Arresting/Investigating Officer. The petitioner shall abide by all the conditions as provided under Section 438 (2) Cr.P.C.

Adjourned to 29.03.2023.”

In deference to the aforementioned orders, the petitioner did not join investigation because of which on 29.03.2023, the aforementioned interim order dated 23.11.2022 stood vacated.

Today, even on second call none has put in appearance on behalf of the petitioner.

In view of the aforementioned facts, since the petitioner has not joined investigation, no ground for the grant of anticipatory bail is made out and therefore, the present petition stands dismissed.

(JASJIT SINGH BEDI)

JUDGE

28.04.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No