

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-M-52447-2022
Date of decision : 17.07.2023

Jagseer Singh @ Shera

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. K.S. Brar, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in case bearing FIR No.221 dated 23.06.2022, registered for offences punishable under Sections 21(c), 61, 85 of NDPS Act (Section 29 of NDPS Act added later on) at Police Station City Faridkot, District Faridkot.

2. While issuing notice of motion, following order was passed on 15.11.2022:-

“Apprehending his arrest in FIR No.221 dated 23.06.2022, registered under Section 21 (C) 61/85 of the NDPS Act, 1985 and Section 29 of the NDPS Act, added later on at Police Station City Faridkot, District Faridkot, petitioner seeks pre-arrest bail.

This is the second pre-arrest bail filed by the petitioner seeking pre-arrest bail. The earlier bail application was dismissed as withdrawn vide order

2023:PHHC:089443

dated 14.10.2022. Counsel for the petitioner has relied upon an order passed by Apex Court in the case of ***Rani Dudeja Vs. State of Haryana, 2017(13) SCC 555*** to assert that even if the earlier petition was ordered to be dismissed as withdrawn on the prayer made by counsel representing the petitioner, the same would not bar the second petition.

Counsel for the petitioner submits that the petitioner has merely been nominated on the disclosure made by co-accused Surinder Singh @ Deep from whom recovery of 52 grams of Heroin has been effected. Apart from that there is no evidence to link the petitioner with the present case. He further relies upon Annexure P-4-affidavit suffered by Surinder Singh, the main accused on whose disclosure the petitioner has been nominated who is explicit in his statement stating as under :-

“3. That I have never met Jagsir Singh @ Shera and have never conversated on telephone with him. That police have created pressure on me and on that basis they have nominated Jagsir Singh @ Shera on my statement who have no concern with the said case and he is totally innocent.”

He thus submits that now it is evident that the petitioner was falsely implicated. Further he submits that since the present case involves intermediate quantity and is not vis-a-vis offence punishable under Section 19 or Section 24 or Section 27-A of the NDPS Act and thus rigours of Section 37 of the NDPS Act would not be applicable. He further relies upon an interim order dated 11.10.2022 passed by the Apex Court in ***Special Leave to Appeal (Criminal) No.6744/2022 titled as “Prabhulal Vs. Central Bureau of Narcotics”*** wherein in somewhat similar circumstances, Apex Court granted interim protection to the petitioner observing as under :-

2023:PHHC:089443

“Learned counsel for the petitioner submits that except to the statement of Chowkidar who has stated that the contraband was uploaded in the truck by the petitioner there is no other supporting evidence on record in reference to which the petitioner has been implicated in the commission of Crime No. 08/2021 under Section 8/15, 25, 29 of the NDPS Act registered at Police Station CBN, Neemuch.

Issue notice, returnable on 15.11.2022.

Dasti, in addition, is permitted.

Let standing counsel for the Central Bureau of Narcotics be served, in addition.

In the meanwhile, there shall be stay on arrest of the petitioner in reference to Crime NO. 08/2021 registered at police station CBN, NEEMUCH, Distt. Neemuch, M.P.”

Thus it will be a case wherein there is no bar in exercising jurisdiction under Section 438 Cr.P.C. while granting indulgence to the petitioner.

Notice of motion returnable for 27.03.2023.

On the asking of the Court, Mr. Arun Gupta, AAG, Punjab, appears and accepts notice on behalf of the respondent-State.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal and surety bonds to the satisfaction of the arresting officer/Investigating Officer. As and when called, the petitioner shall join the investigation. He shall abide by the conditions enumerated under Section 438(2) of the Cr.P.C. The petitioner shall also remain bound by the following conditions :-

(i) The petitioner shall not change his mobile number.

(ii) He shall report to the concerned Police Station every day.

(iii) The petitioner shall not indulge in any illegal activity.

(iv) The petitioner, if called by the authorities shall

join the investigation.”

3. Today, counsel for the petitioner has placed reliance upon order passed by Apex Court in ***Vijay Singh vs. State of Haryana*** which reads as under:-

“The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the 'NDPS Act'). His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail.

Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed

All pending applications are disposed of."

4. Learned State counsel, on instructions from ASI Kuldeep Singh, has stated that pursuant to the order dated 15.11.2022, the petitioner has joined investigation and is no longer required for custodial interrogation.

5. In view of above, the interim order dated 15.11.2022 passed by this Court is made absolute, subject to the conditions as enumerated under

6. This petition stands disposed off.

(PANKAJ JAIN)
JUDGE

17.07.2023
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No