

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

213

CRM-M-58255-2022

Date of decision : 18.01.2023

Kamaljeet

....Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Kartar Singh, 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.651 dated 03.12.2022 registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 27-A and 29 of the NDPS Act were added lateron) at Police Station City Fatehabad, District Fatehabad.

Brief facts of the case are that on 03.12.2022, police party headed by ASI Jaivir Singh, on the basis of secret information, apprehended co-accused Narender Kumar @ Nandi within the area of Police Station City Fatehabad. On conducting search in accordance with law, 250 strips (each containing 10 tablets) total 2500 tablets of Tramadol Hydrochloride Tablet IP 100 mg. Covidol 100 SR, were recovered from him. During interrogation, co-accused Narender Kumar @ Nandi suffered disclosure statement disclosing that he had purchased the recovered contraband from the petitioner.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of co-accused Narender Kumar @ Nandi which has no relevance in eye of law. The petitioner was not apprehended on the spot. The petitioner has nothing to do with the co-accused. Except the disclosure statement made by co-accused, there is no evidence against the petitioner to link him with the alleged recovered contraband. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join investigation. Therefore, the petitioner may be granted anticipatory bail.

On the other hand learned State counsel opposed the present petition on the ground that 2500 tablets of Tramadol Hydrochloride Tablet IP 100 mg. Covidol 100 SR were recovered from co-accused Narender Kumar @ Nandi without any licence or permit who in his disclosure statement stated that he had purchased the said contraband from the petitioner. The quantity of alleged contraband recovered from the co-accused falls under the category of commercial quantity. The petitioner is a habitual offender and he is also involved in 02 other cases under the NDPS Act. For thorough investigation of the case custodial interrogation of the petitioner is required. Therefore, the present petition may be dismissed.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. The contraband is alleged to have been purchased from the petitioner and

the quantity of contraband falls under the category of 'commercial' quantity which attracts rigors of Section 37(1)(b) of the NDPS Act.

The Hon'ble Apex Court in case ***State of Punjab Vs. Baldev Singh : 1999 AIR SC 2378*** has observed regarding Drug Addiction, Drug abuse and its effect on the society. The Hon'ble Apex Court in Para No.3 has observed as under:-

“3. Drug abuse is a social malady. While drug addition eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but illicit money generated by drug trafficking is often used for illicit activities including encouragement of terrorism. There is no doubt that drug trafficking, trading and its use, which is a global phenomena and has acquired the dimensions of an epidemic, affects the economic policies of the State, corrupts the system and is detrimental to the future of a country. It has the effect of producing a sick society and harmful culture. Anti-drug justice is a criminal dimension of social justice. The United Nations Conventions Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances which was held in Vienna, Australia in 1988 was perhaps one of the first efforts, at an international level, to tackle the menace of drug trafficking throughout the comity of nations. The Government of India has ratified this convention.”

Moreover, the antecedents of the petitioner are also not good as he is already involved in 02 other cases under the NDPS Act. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Furthermore, investigation is still going on in the present case. For thorough investigation of the case, the custodial interrogation of the petitioner is necessary. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in *State Vs. Anil Sharma : (1997) 7 SCC 187* held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

18.01.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No