

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

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CRM-M-58788-2022
Date of decision : 30.01.2023

Parveen Kumar @ Rahul

....Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Rishu Mahajan, Advocate for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab.

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.95 dated 18.07.2021 registered under Sections 21(c), 29 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Patti, Taran Taran.

Brief facts of the case are that on 18.07.2021, police party headed by SI Nirmal Singh, apprehended co-accused Rajbir Singh and on conducting search in accordance with law, 05 kgs. and 200 grams of heroin was recovered from his car. During interrogation, it has been revealed that accused Rajbir Singh was actually hired by the petitioner and his co-accused Tarun Sareen @ Tanu to distribute the heroin to drug dealers.

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 Naresh and Rahul 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 5 kgs. and 200 grams of heroin were recovered from co-accused Rajbir Singh without any licence or permit. During investigation it has been revealed that the petitioner is the main dealer and supplier of heroin. The quantity of alleged contraband recovered from the co-accused falls under the category of commercial quantity. 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. On the basis of disclosure statement made by accused-Rajbir Singh, accused-Naresh and Rahul @ Mani were arrested. During interrogation, accused Naresh and Rahul @ Mani said that the heroin was supplied to them by Tarun Sareen @ Tanu and Parveen Kumar @ Rahul (the petitioner). 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.”

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.

30.01.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No