

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Reserved on: December 07, 2023  
Date of Decision: December 12, 2023

CRM-M-56674-2023

Mujahir

...Petitioner

Versus

The State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

**Present:-** Mr. Sanpreet Sandhu, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

**DEEPAK GUPTA, J.**

By way of this petition filed under Section 438 Cr.P.C. petitioner prays for grant of anticipatory bail in case FIR No.415 dated 21.08.2023, under Section 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as 'the NDPS Act'), registered at Police Station Sadar Yamunanagar, District Yamuna Nagar.

2. As per prosecution allegations, on the basis of secret information, co-accused Sumit was apprehended on 21.08.2023; and 1272 capsules of Tramadol, weight 725.04 grams, were recovered from him. In his disclosure statement, said Sumit nominated the petitioner to be the supplied of the contraband.

3. It is contended by learned counsel for the petitioner that the petitioner is not named in the FIR; that no independent witness was

joined at the time of arrest of co-accused or at the time of recovery; that

case against the petitioner is based upon the disclosure statement of co-accused, which is inadmissible in view of the law laid down in *“Toofan Singh v. State of Tamil Nadu”, 2021(1) RCR (Crl.) 1*; that the petitioner is ready to join the investigation and so, he be allowed pre-arrest bail.

4. Strongly opposing the bail petition, learned State counsel submits that custodial interrogation of the petitioner is necessary in order to know the source of the contraband procured by the petitioner, which was supplied to co-accused. As per investigation conducted so far, petitioner had sold the contraband capsules to co-accused Sumit for ₹20,000/-. Learned State counsel has further drawn attention towards the status report, as per which the statement of accounts pertaining to the petitioner and co-accused Sumit revealed about the regular payments by co-accused Sumit to the petitioner and that during the period 01.12.2022 to 21.08.2023, as many as 42 transactions/payments were made by co-accused to the petitioner. Not only this, call details records pertaining to the mobile number of the petitioner and that of co-accused as collected during investigation along with the certificate under Section 65-B of the Evidence Act, revealed regular conversation between both of them. As many as 265 calls were exchanged amongst them during 21.06.2023 to 21.08.2023. Learned State counsel contends that the matter is still under investigation. Not only this, petitioner wrongly pleaded to have clean antecedent, inasmuch as he is involved in two more cases, as detailed in para No.11 of the status report, details of which were not provided by the petitioner. Learned State counsel has also referred to *“State of Haryana v.*

*Samarth Kumar*” [Criminal Appeal No.1005 of 2022 {arising out of SLP (Crl.) No.6575 of 2021}], which was decided on 20.07.2022, wherein the Hon'ble Supreme Court has held that merely because no recovery was effected from the petitioner; and the petitioner, who was implicated on the basis of disclosure statement of main accused, cannot be a ground to grant anticipatory bail and that advantage of the decision in *Toofan Singh's* case (supra) can perhaps be granted at the time of arguing the regular bail application or at the time of final hearing after conclusion of trial. With these submissions, learned State counsel prays for dismissal of the petition.

5. I have considered submissions of both sides and have appraised the record carefully.

6. The quantity of the contraband as recovered from co-accused falls in the commercial category. He has specifically nominated the petitioner to be the supplier of the contraband. In these circumstances, to carry out further investigation, it becomes necessary to interrogate the petitioner in order to unearth the source, from which he procured the contraband for supplying to the petitioner. No doubt that the petitioner is nominated in this case on the basis of the disclosure statement of co-accused, but the Court cannot ignore the fact that just within 02 months prior to the date of recovery i.e. 21.08.2023, as many as 265 calls have been exchanged between the petitioner and co-accused, as per call details record. Not only this, 42 transactions/payments have been made by the co-accused to the petitioner during the period of last more than 08 months, prior to the date of recovery. Learned counsel for the petitioner has not been able to convince this Court about the said payments or the

call details record; or that petitioner and co-accused were having business transactions or any other relation.

7. Having regard to all the aforesaid facts and circumstances, but without commenting anything further on the merits of the case, this Court finds the present case to be unfit for grant of pre-arrest bail.

As such, the petition is dismissed.

December 12, 2023

sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No