

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-59564-2023 (O&M)

Date of Decision: 21.12.2023

HARPAL SINGH

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kanwar Inder Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. Through instant petition, the petitioner is seeking anticipatory bail in case FIR No. 214 dated 21.10.2023 registered under Sections 17(b) and 29 of NDPS Act at Police Station Odhan, District Sirsa.
2. On 28.11.2023, following order was passed:

“The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C) for grant of anticipatory bail to the petitioner in FIR No.214 dated 21.10.2023 registered under Sections 17 (b) and 29 of the NDPS Act, 1985 at Police Station Odhan, District Sirsa.

Learned counsel for the petitioner, inter alia, contends that the petitioner has been implicated in the present matter on the basis of disclosure statement suffered by the co-accused Avtar Singh while in police custody, which is not admissible being hit by Section 26 of the Indian Evidence Act, 1872. It is further contended that nothing has been recovered from the petitioner to prove conscious possession over the

alleged contraband. Recovery of 1 kg 750 gms of opium from the co-accused Avtar Singh falls within the ambit of non-commercial quantity.

Notice of motion.

On the asking of the Court, Mr. Gurmeet Singh, AAG, Haryana who is present in Court, accepts notice on behalf of the respondent-State and opposes the prayer for grant of anticipatory bail to the petitioner on the ground that he is involved in one more NDPS Act.

*In rebuttal, counsel for the petitioner relies upon the judgment passed by the Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and another 2020 (1) RCR (Crl) 831 (SC)** to contend that bail cannot be denied on the ground that another case is pending against the accused.*

*In the meantime, keeping in view the law enunciated by the Hon'ble Supreme Court in **Satender Kumar Antil Vs. CBI (2022) 10 SCC 51; Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others 2010 SCC OnLine SC 137; Gurbaksh Singh Sibbia etc. Vs. State of Punjab (1980) 2 SCC 565, Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273 and Sushila Aggarwal Vs. State of NCT Delhi 2020 (1) RCR (Criminal) 833**, at the first instance, the petitioner is directed to appear before the Investigating Officer on or before 08.12.2023 and on his doing so or in the event of arrest, the petitioner shall be admitted to interim bail on furnishing of bail/surety bond to the satisfaction of the Investigating/Arresting Officer. The petitioner shall cooperate with the Investigating Officer and abide by the conditions as provided under Section 438 (2) Cr.P.C.*

If the Investigating/Arresting Officer does not permit the petitioner to join the investigation, the

petitioner would appear before the Illaqa Magistrate, who would then summon the Arresting Officer and direct him to join the petitioner in investigation, in terms of the order of this Court.

Adjourned to 21.12.2023.

Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.”

3. Learned State counsel on instructions from Inspector Rakesh Kumar, submits that in compliance of order dated 28.11.2023 passed by this Court, the petitioner has, however, joined the investigation but not co-operated with the Investigating Agency.
4. Keeping in view the fact that petitioner has joined the investigation, the order dated 28.11.2023, is made absolute. The petitioner shall abide by the terms and conditions enumerated in Section 438(2) of Cr.P.C. and is directed to join the investigation as and when called upon to do so.
5. The petition is accordingly allowed.

21.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No