

2024:PHHC:059996

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

212

CRM-M-6190-2024
Date of decision : 29.04.2024

Phatte Singh Petitioner

versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ankit Joshi, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. On 15.02.2024, following order was passed:-

“Apprehending his arrest in FIR No.322 dated 07.12.2023, registered under Sections 18/27-A/29 of NDPS Act at Police Station Sadar Tohana petitioner seeks pre-arrest bail. This is the second petition filed by the petitioner seeking pre-arrest bail.

Reply by way of an affidavit of Jagdish Kumar, HPS, Deputy Superintendent of Police, Bhuna District Fatehabad on behalf of respondent No.1 has been filed. The same is taken on record.

Learned counsel for the petitioner has pointed out that in the earlier order passed rejecting the pre-arrest bail, this Court erred in recording that the contraband recovered from the co-accused would fall within the commercial quantity. He points out that the contraband recovered is 1 kg 150 gram of opium, which is less than the commercial quantity notified i.e. 2.5 kg of opium.

2024:PHHC:059996

From the above, this Court is satisfied that owing to the factual mistake committed by this Court, the petitioner could not be made to suffer and it is owing to the aforesaid error committed by this Court, this Court finds that it would be a case of extraordinary circumstance where the second petition would be maintainable.

Learned counsel for the petitioner submits that the petitioner has been nominated on the basis of disclosure made by co-accused. He further relies upon ***Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*** to submit that mere disclosure is not enough to drive home guilt of the petitioner.

Adjourned to 29.04.2024.

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.”

2. Today, learned State counsel, on instructions from SI Hardial Singh, has stated that pursuant to the order dated 15.02.2024, the petitioner has joined investigation and is no longer required for custodial interrogation.

3. In view of above, the interim order dated 15.02.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

4. This order should not be treated as "blanket" order. It will not be read granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of

any other incident that involves commission of an offence.

5. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the petitioner.
6. The petitioner shall be deemed to be in custody for the purpose of Section 27 of the Evidence Act, 1872 in regard to a discovery of facts made in pursuance of information supplied by the petitioner in case the occasion arises.
7. It will be open to the police or the investigating agency to move this court for a direction under Section 439 (2) Cr.P.C. to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.
8. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.
9. Disposed off accordingly.

(PANKAJ JAIN)
JUDGE

29.04.2024
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No