

2024:PHHC:102876



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

206

CRM-M-30860-2024 (O&M)
Date of decision: 09.08.2024

Sunil ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Karan Singh, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner in FIR No. 107 dated 11.06.2024, registered under Sections 21(b) and 29 of the NDPS Act, 1985 at Police Station Dhand, District Kaithal.
2. Brief facts of the case relevant for the disposal of the present petition are that on 11.06.2024, co-accused Karambir @ Chhota was apprehended by a police party and recovery of 21.50 grams of heroin was effected from him. The petitioner has been nominated in this case on the basis of the disclosure suffered by the said co-accused, whereby he stated that he used to take heroin from the petitioner for selling the same to others. Apprehending his arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Kaithal but the same had been dismissed, vide order dated 24.06.2024.

2024:PHHC:102876



3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The petitioner was not found at the spot and has been involved in this case on the basis of the disclosure statement made by the co-accused, which is not admissible in law against the petitioner. Even the recovery of the said contraband effected from the co-accused is of non-commercial quantity. The petitioner is not involved in any other case under the NDPS Act. He is ready to join the investigation. No useful purpose would be served by detaining him in custody. Therefore, it is urged that the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner has relied upon an order dated 17.05.2023 passed by Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 1266/2023, titled as ***Vijay Singh vs. State of Haryana***, whereby the accused, who was nominated in a case under the NDPS Act on the disclosure of another accused, was granted concession of anticipatory bail, despite the fact that he was involved in one more case under the said Act.

4. *Per contra*, learned State counsel has argued that though the petitioner has been nominated in this case on the basis of the disclosure suffered by the co-accused but during the course of investigation, his complicity in the subject crime has been established. He is involved in multiples FIR under the provisions of IPC as well as under the Arms Act. The petitioner may also be a drug peddler and a part of the drug racket as the co-accused Karambir @ Chhota is a known drug peddler and in order to unearth the truth and antecedents of the petitioner, his custodial interrogation is must for proper investigation in the matter as well as for effecting further recovery of contraband, if any. It is, thus, argued that the petition is liable to be

2024:PHHC:102876



dismissed.

5. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Karambir @ Chhota, from whose custody, recovery of 21.5 grams of heroin was effected. During investigation, on the basis of the call details record of the petitioner and aforesaid co-accused, it has been found that the petitioner was in constant touch with the co-accused on 03.06.2024 and 04.06.2024. Even in his disclosure statement, aforesaid co-accused had stated that on 03.06.2024, the petitioner had supplied him 50 grams of heroin at the rate of Rs. 21,000/- per gram, out of which, he had sold 31 grams of heroin to others at higher rates. Hence, the complicity of the petitioner stands *prima facie* established in this case. More so, the petitioner is shown to be involved in as many as 11 FIRs under the different provisions of IPC and Arms Act, including serious offences like robbery and attempt to murder, which shows that he is a habitual offender. In the considered opinion of this Court, the custodial interrogation of the petitioner is required for thorough investigation in the matter as well as for bursting the drug racket and effecting recovery of contraband, if any. So far as the order dated 17.05.2024, passed by Hon'ble Supreme Court in **Vijay Singh's** case (supra), granting concession of anticipatory bail to the accused, is concerned, the same is distinguishable on the facts of the case as in that particular case, no other material was found to implicate the petitioner, except the disclosure statement made by the co-accused. However, in the present case, a direct link between the petitioner and recovered contraband has been established during

2024:PHHC:102876



investigation. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out. Accordingly, finding no merit, the petition is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

09.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No