



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

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**CRM-M No.32196 of 2024
Date of decision : 9.7.2024**

ManojPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

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

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., for grant of anticipatory bail to the petitioner in FIR No.58 dated 20.8.2023, under Section 18 of the NDPS Act, 1985 (Section 25 of NDPS Act added later on), registered at Police Station Mehna, District Moga.

2. Learned counsel for the petitioner would contend that the petitioner has nothing to do with the commission of offence. In fact, it is his real brother who is involved in the case but while reading of the contents from the FIR, as the same has also been reproduced herein below:-

On 20.8.2023, I, ASI Tarsem Singh along with ASI Manpreet Singh, C. Lovejeet Singh were present near bus stand village Talwandi Bhangerian on patrolling duty on government vehicle no.PB-08-AY-2800. Then a secret informer met us and gave information that one Vikas Sehrawat son of prem Sehrawat r/o Barh Malk Tehsil and District Sonapat and Harsh Bajaj son of Jaspal Bajaj r/o Chaml, District Sirsa are doing the business of selling opium. Today they are going ahead from Moga through villages on Dusanjh Road in White colour Verna car bearing no.HR-08-V-0017. If naka is laid, then they



can be apprehended alongwith heavy quantity of opium. On this information ruka (document) was sent through ASI Manpreet Singh to the police Station for registration of the case. Thereafter, on telephonic call ASI Sukhwinder Singh was sent on the spot, who laid naka and the aforesaid car was got stopped. On search of the car, 4 Kg. of opium was recovered from the kit bag laying between the driver and conductor seat. The said car is registered in the name of the present petitioner.

3. It has been contended on his behalf that the vehicle do not belonged to him and even his brother is not involved in any other case whatsoever.

4. Notice of motion.

5. Mr. Rajiv Verma, DAG, Punjab, accepts notice on behalf of the respondent/State on the asking of the Court.

6. Learned State counsel would contend for dismissal of the petition on the strength of the fact that heavy quantity of contraband i.e. 4 Kgs. of opium was recovered from co-accused Vikas Sehrawat and Harsh Bajaj, who were using the Verna car bearing No. HR-08-V-0017. He would submit that the petitioner is real brother of Vikas Sehrawat and the vehicle used in the commission of crime is owned by the present petitioner, who is directly associated and connected, and therefore, the prosecution has rightly nominated him as an accused with a direct link to the recovery of contraband from two co-accused persons who were travelling in the car owned by the present petitioner.

7. Be that as it may, having regard to the fact that the catch of contraband is commercial in nature that too 4 Kgs. in quantum and the same has been recovered from the conscious possession of co-accused



persons who were travelling in a car owned by the present petitioner admittedly and this very fact has not been controverted by learned counsel for the petitioner, in any manner whatsoever, except the fact that his brother is not involved in any other case and as such has been falsely implicated in the present FIR. As far as the contention of learned counsel for the petitioner to the extent that no incriminating material has come forth during investigation as is evident from the challan presented in Court, enquiry in the present FIR is concerned, there is sufficient material in the form of ownership of the car which was used by the co-accused persons and that too none other than his real brother.

8. In the light of the same, it cannot be believed that the petitioner has no link with the contraband recovered from the car which was used by his real brother.

9. In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

[37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless— (i) the Public



Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]

10. Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

11. Other than the aforesaid discussion, it is Section 35 of NDPS Act which raises a presumption of culpable mental state of mind for which no explanation is forthcoming from the petitioner in this regard.

Section 35 of NDPS Act reads as under:

“35. Presumption of culpable mental state.—(1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section “culpable mental state” includes intention motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section , a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.”

12. Having heard the learned counsel and examining the facts and circumstances at this juncture, there is no material evidence to establish innocence of the petitioner-accused as such, the question of admitting him on bail does not right at all.
13. Hence the petition being devoid of any merits does not survive for consideration which needs to be dismissed.
14. Accordingly, petition stands dismissed.

(SANDEEP MOUDGIL)

JUDGE

9.7.2024

Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No