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

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CRM-M-35404-2024 (O&M)
Date of decision: 27.08.2024

Hari Shankar**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Tarun Sharma, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Through the instant petition, filed under Section 482 of Bhartiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*), the petitioner seeks anticipatory bail in case FIR No. 244, dated 12.05.2024, registered under Sections 18 and 29 (*added later on*) of the Narcotic Substances and Psychotropic Substances Act, 1985 (*for short 'the Act'*) at Police Station Thanesar Sadar, District Kurukshetra.

2. The relevant facts in brief are that on 12.05.2024, on receipt of a secret information to the effect that the co-accused Hari Om @ Babu, who originally hailed from Uttar Pradesh and was engaged in the business of selling opium and at that time he along with opium was present ahead of Pipli flyover, GT Road and further that he could be apprehended with opium, a police party headed by ASI Sukhdev immediately rushed towards the spot after preparing a notice under Section 42 of the NDPS Act and sending *ruqa* to DSP Om Parkash.

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The police party reached at the informed place and apprehended the accused Hari Om @ Babu, who was waiting for public transport for going towards U.P. He was given a notice under Section 50 of the Act. He opted to get himself searched in the presence of a Gazetted Officer, on which, Nayab Tehsildar Thanesar was called at the spot and in his presence, the search of co-accused Hari Om was conducted and opium weighing 250 grams was recovered from his pocket. Investigation was handed over to ASI Sudesh Kumar subsequently. The samples were taken. The remainder of the contraband as well as samples was duly sealed. The co-accused was formally arrested. During interrogation, he disclosed that he had purchased the contraband from the present petitioner. On the basis of his disclosure statement, the petitioner was nominated as an accused. Apprehending his arrest, he moved application for grant of pre-arrest bail, which was dismissed by the Court of learned Additional Sessions Judge, Kurukshetra, vide order dated 17.07.2024.

3. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case on the basis of disclosure statement of the accused, which cannot be considered to be admissible in evidence. No offence has been made out against him. No recovery is to be effected from him. His custodial interrogation is not required. No purpose would be served by detaining him in custody. He is ready to join the investigation. With these arguments, it is argued that the present petition deserves to be allowed and the petitioner deserves to be granted concession of pre-arrest bail.

4. Status report has been filed by the respondent-State. It submitted therein and learned State counsel has argued that the petitioner was supplier of

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the contraband to the co-accused Hari Om @ Babu. There was exchange of as many as 19 calls between the petitioner and co-accused from 8th to 10th May, 2024, i.e. just two days before the arrest of the co-accused. The petitioner is supplier of the contraband. His custodial interrogation is required for conducting thorough investigation in the matter and for the purpose of knowing about the source from where the petitioner used to take contraband. The allegations against him are serious in nature. Therefore, it is argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

6. The petitioner has been nominated in this case on the basis of the disclosure statement suffered by aforesaid co-accused Hari Om @ Babu, who was apprehended by the police party and recovery of 250 grams of opium was effected from him. In his disclosure statement, co-accused stated that the petitioner had given him 500 grams of opium and an amount of Rs. 11,000/- to sell opium, out of which, he had already sold 250 grams of opium in Punjab. Recovery of an amount of Rs. 10,000/- was also effected from the co-accused. During the course of investigation, call detail records of the co-accused with the petitioner were also procured and a perusal of the same reveals that there were as many as 19 calls between them within a period from 8th to 10th May, 2024, i.e. just two days before the arrest of the co-accused, which shows that the petitioner was hyperactive in commission of subject offence and his complicity in the crime stands *prima facie* established. There are serious and specific allegations against the petitioner. The custodial interrogation of the petitioner is must for

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proper investigation in the matter and to burst the network of drug smuggling as well as for effecting recovery of contraband, if any. 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, while deciding pre-arrest bail applications, 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 of pre-arrest bail. 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.

27.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No